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IMPERIAL STUDIES, No. 1.

*General Editor* :—A. P. NEWTON, M.A., D.Lit., B.Sc., F.S.A.,  
Rhodes Professor of Imperial History in the University of London.

POLITICAL UNREST IN  
UPPER CANADA, 1815-1836







# POLITICAL UNREST IN UPPER CANADA

1815 - 1836

BY

AILEEN DUNHAM

B.A. (Alberta), M.A. (Toronto), Ph.D. (Lond.)

Instructor in History in the College of Wooster, Ohio.

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## THE SERIES OF IMPERIAL STUDIES MONOGRAPHS

THE last few years have seen a remarkable development in the study of modern history, and the history of our Dominions and Colonies is now beginning to take its proper place. But, although much has been written, the number of monographs in this field is comparatively small and there is still full scope for independent research. Indeed, this research is urgent and imperative: the problems of a century ago throw much light upon the problems of to-day.

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*Chairman of the Imperial Studies Committee.*

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*January, 1927.*





## AUTHOR'S PREFACE

As the ground covered by this volume forms a part of the main history of Canada, some repetition of well-known incidents has been unavoidable. But the fullest accounts of the period, such as the writings of John Charles Dent, are popular romances rather than scientific treatises, and the few trustworthy accounts which are available are very sketchy. One of the chief handicaps encountered has been the lack of adequate monographs on closely related subjects. The few that exist, such as Smith's *History of the Post Office in British North America*, and Cruikshank's *Study of Disaffection in Upper Canada, 1812-15*, have proved very useful. Kindred subjects, such as immigration and the commercial system, could not be passed over without indicating their important place in the history of political unrest. Wherever generalizations have been made, the conclusions are the result of a careful perusal of state-papers. But auxiliary subjects are much too intricate to be dealt with in detail in the scope of a single volume.

The volume could not have reached its present form without much assistance, which I gratefully acknowledge. The Wesleyan Methodist Missionary Society of Great Britain gave me access to its private papers. Prof. Wrong, of the University of Toronto, first aroused my interest in the subject, and directed my early work in Canada. To him and to Prof. A. L. Burt, of the University of Alberta, I am indebted for careful textual criticism of the manuscript. I am especially indebted to Prof. A. P. Newton, of the University of London, who guided my research work in London. The University of London and the Royal Colonial Institute, by their grants, have made publication possible.

AILEEN DUNHAM.

WOOSTER, OHIO,  
October, 1926.





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*ABBREVIATIONS' USED.*

- A. & P. House of Commons' Accounts and Papers.  
B. & C. Barnwell and Cresswell's Law Reports, King's Bench.  
C.O. 42/411. The 411th Volume of the 42nd Series of the  
Colonial Office records preserved in the Public  
Record Office.  
D. & R. Dowling and Ryland's Law Reports, King's Bench.  
D.N.B. Dictionary of National Biography.



## CHAPTER I

### INTRODUCTION

THE span of years from 1791 to 1837 is generally considered the most unattractive period of Canadian history. An opinion is prevalent that the War of 1812 and the fiasco of 1837 alone render tolerable the wearisome narrative of abortive administrations and petty, personal squabbles, which characterized the political life of British North America. Because the country was divided into several practically independent administrations, its history tends to be local, and local history presents little that is grand and much that is irksome to the student. Moreover, Canadians are not proud of the so-called "rebellions" of 1837, and there has been a tendency to interpret the political life of the twenty years after 1815 in the light of those rebellions.

The student's lack of enthusiasm, however, proceeds not so much from the events of the period as from the treatment which is usually accorded them. The internal history of this period in Upper Canada undoubtedly presents many sordid and tedious aspects. The province was in process of settlement by pioneers from the United States and Great Britain. The majority of these people were from the lower strata of society, and it cannot be denied that ignorance and squalor were only too common. The outlook of a scanty population was rendered even more provincial than scarcity of numbers would warrant by the dispersed nature of the settlements. Few men had leisure or ability to devote to politics, and public life was vitiated by the personal rancour inevitable in small communities. These facts the historian cannot neglect without perverting his narrative. But to dwell on them alone is to defeat the purpose of history, which seeks a broader perspective and a deeper insight into the significance of the events of a period than a contemporary can achieve.

Regarded from this wider point of view, the history of Upper Canada is almost dramatic. The story of the movement of peoples and the struggle of pioneers in the wilderness is primarily social and economic, but it profoundly affected politics. From the constitutional point of view a study of the working of the Act of 1791 is an integral phase of the story of the British Empire. This act, which provided two governments, one for Upper and one for Lower Canada, was the first grant of representative institutions by the Imperial Parliament. Moreover, since it was passed fewer than ten years after the close of the American Revolution, it is significant as embodying the modifications in colonial policy entailed by the disruption of the older British Empire. The history of the provinces under this constitution forms an interesting parallel to the constitutional histories of the thirteen American colonies. In some respects, indeed, it is merely part of the final chapter of the history of the old colonial system and of its disruption by the American Revolution. From the purely legal point of view, also, the period demands attention. Not only did the old problem of the scope and validity of provincial law and parliamentary privilege in a colonial government present itself once more, but there is the story of the foundation and growth of new courts of law and the application and modification of the common law of England to an entirely new community.

There is yet another aspect of the period which is peculiarly noticeable in the province of Upper Canada. The peace of 1783 left the English-speaking people of the world divided into two states. From the circumstances of the quarrel which had led to the separation, these two states, in many respects, differed fundamentally. Before 1832, the government of Great Britain was an aristocracy with the institutions of monarchy, the House of Lords and the established church strongly entrenched and highly prized. On the other hand, the United States stood as the champion of democracy, of voluntary churches and of popular education. After 1815 the conservative reaction from the French Revolution threw the British ruling classes into intense opposition to democracy; whereas, in the United States, men of the stamp of Andrew Jackson were pushing democratic principles to their most



extreme conclusions. Now the infant settlement of Upper Canada, lying adjacent to the United States, and yet a British province, peopled half from Great Britain, half from the United States, formed a battle-ground on which were fought out the conflicting ideals of religion, education and government of the two states. This was the leading factor of the political situation in the province in the first decades of the nineteenth century. As the century advanced, Great Britain became more democratic, and the United States, with more advanced industrialism, became less so. The result was that Canada was less torn by conflicting ideals. But even to-day no one will deny that Canada is evolving an interesting amalgamation of British and American types of society.

Allied to this, but relatively not so important, is another problem. How far was the popular unrest of Canada, after 1815, merely a minute exemplification of the stirrings of all Europe towards democracy? To what extent did the British emigrant of about 1830 carry with him the disposition to agitate which he had possessed while a labourer in Great Britain? To what extent were the popular leaders of Upper Canada consciously following the lead of radicals in England in their selection of bones of contention?

We find another point of interest relating to the evolution to what was to be the Dominion of Canada, namely, the friction between Upper and Lower Canada which characterized the fifty years of their separate existence. By 1840 it was generally conceded that Upper Canada could never attain great prosperity so long as she was cut off from her only outlet to the sea, and remained commercially at the mercy of her French neighbour. After the failure of this separate existence it only remained for a united government in turn to fail, and thus to pave the way for a new system. From this point of view, political unrest in Upper Canada, in so far as it was the result of commercial handicaps, forms an essential phase of the history of the federation of Canada.

The details of the political history of Canada are inseparably connected with its social history. In any pioneer land the people are more interested in clearing the forests than in voting; they are more deeply concerned over the state of the roads than over the state of the constitution. The

education and outlook of the people, their national origin, prejudices and antipathies, their moral standards, the state of their pocket-books and the state of their health, all affected their political outlook. The very land, with its vast expanses of rugged forests, its highways of lakes and rivers, its fish and its furs, its climate of severe extremes, formed a silent but stubborn force ever moulding political history.

These aspects of the life of Upper Canada give it a significance which rises above the level of village politics. This volume makes no attempt to treat exhaustively any of these aspects. In itself each is a subject for special treatment, and as such each involves the history of other provinces than Upper Canada. Such problems are here dealt with only incidentally as they are concerned with the commonplaces of political life. The period is one of conflict between different peoples, with different ideals, adjusting themselves to a new soil. The prevailing note of politics was unrest. As contrasted with the fertile years which followed the rebellion of 1837, the period is barren of achievement in the field of political reform. Yet it is generally conceded that the publication of Lord Durham's Report in 1839 forms a turning point in the history of the empire. Unless one is content with the assumption that the great report, advocating the great idea of responsible government, sprang by some miracle from the brain of a single imperial statesman, the history of Upper and Lower Canada, previous to Lord Durham's investigation, should assume peculiar importance.

A word of explanation should be offered concerning the dates limiting the period. The justification for choosing 1815 as a starting-point should be apparent. Before the war the province had no real political history ; its problems were then economic. The war ushered in a more involved period, not only by increasing the population, but by concentrating British attention more fully on Canada, and by embittering relations with the United States. Not so evident is the reason for closing an account of political unrest in Upper Canada with the dismissal of Sir Francis Bond Head's first parliament in the summer of 1836. Against such a date it may be urged that the story has been abruptly cut off to exclude the climax, namely, the rebellion of 1837. It is, however, precisely for



this reason that an account of the so-called "rebellion" has been omitted. The rebellion was not a climax, but rather an anti-climax, accidental rather than inevitable, and out of harmony with the real sentiments of Upper Canadians. To conclude this transitional period with an account of the rebellion would be to give to the most unbalanced element among the reformers, the extreme radicals, a prominence which it has been the author's deliberate purpose to avoid. The only justification for it would be that the rebellion precipitated Lord Durham's Report and the final triumph of the idea of responsible government ; but we are here concerned rather with the germination of the idea of responsible government than with the story of its final application. Moreover, Upper Canadian history before 1837 is sufficiently isolated to make separate treatment possible, whereas an account of the rebellion belongs also to the history of Lower Canada, and to that of Anglo-Saxon relations, rather than to the internal history of Upper Canada.

### *The Social Background*

The province of Upper Canada was a by-product of the American Revolution. Speaking of French Canada, Sir Guy Carleton had written in 1767 : " Barring a catastrophe shocking to think of, this country must, to the end of time, be peopled by the Canadian race."<sup>1</sup> In fewer than ten years, the unspeakable catastrophe took place, and from 1775 until the outbreak of the War of 1812 a steady stream of people poured from the United States across the Canadian border, while others sailed up the St. Lawrence, to what was then the hinterland of the French province of Quebec.

By 1812 the foundations of the new province, which had been separated from Quebec since 1791, were firmly established. There is no census and it is impossible to ascertain the actual number of settlers, but a conservative figure makes them ninety thousand in 1815.<sup>2</sup> The settlements formed a strip,

<sup>1</sup> Carleton to Shelburne, Nov. 25, 1767—Shortt and Doughty, *Documents*, vol. I, p. 281.

<sup>2</sup> Barnabas Bidwell gives the figure at 76,984 in 1811 ; James Strachan at 120,000 in 1821 ; Audet's *Handbook of Canadian Dates* gives an estimate of 95,000 in 1814 ; Kingsford says 95 to 100,000 in 1815. Michael Smith's figure of 136,000 in 1811 seems too high.



six to fifty miles wide, along the five hundred miles of waterway from the Ottawa to the Detroit river. This strip was widest and most thickly settled in three stretches ; the first along the St. Lawrence from Cornwall to Brockville ; the second along the Bay of Quinté ; and the third comprising the Niagara peninsula, which was cleared and settled by 1817. Kingston at the foot of Lake Ontario, and York on its north-west shore, stood isolated in stretches of wilderness. In the centre of the north shore of Lake Erie was Colonel Talbot's settlement of Port Talbot, and in the west the river Thames, with London as its centre, was attracting many pioneers. At the head of Lake Erie were the old French settlements at Sandwich and Amherstburg.<sup>3</sup>

So much for the waterways. Thanks to the energy of Colonel Simcoe, the first governor, two highways had been laid out in the province ; one from York to Lake Simcoe, called Yonge Street, both sides of which were settled and improved ; the other, Dundas Street, still crude, running a distance of two hundred miles from Burlington Bay to Lake St. Clair. The so-called "king's highway" extended from Montreal, through the villages of Cornwall, Prescott and Brockville, to York. There was also a bad road from York to Niagara, and from Fort Erie, twenty miles westward along Lake Erie.<sup>4</sup> The towns were insignificant. Kingston, the most important military and naval base, prospered greatly during the war and in 1817 boasted three hundred dwellings and nearly twenty-eight hundred inhabitants. York (later Toronto), though the seat of government, was still a small village of fewer than a thousand. It had been twice raided by the Americans and in 1815 was probably at the lowest ebb of its fortunes. Four years later it is represented as containing two thousand people.<sup>5</sup>

The population was not only small ; it was far from homogeneous. Along the St. Lawrence were settled the Glengarry Highlanders, some of them loyalists who had served in the revolution,

<sup>3</sup> Gourlay, *Statistical Account*, vol. I, Sketches of Upper Canada ; Smith, *A Geographical View of the Province of Upper Canada*, pp. 40-9.

<sup>4</sup> Smith, *op. cit.*, pp. 54-5.

<sup>5</sup> Methodist Missionary Society, *Incoming Letters, Canada*, vol. I, Henry Pope, May 28, 1818, and vol. II, Feb. 25, 1820. *Landmarks of Toronto*, vol. II, p. 997.

others emigrants direct from Scotland. The settlers on the Bay of Quinté were also loyalists. The Niagara peninsula was first occupied by disbanded soldiers of Butler's Rangers. Along the Detroit River were French Canadians. Yonge Street was peopled chiefly by German Quakers and Mennonites from New York who had responded to Simcoe's calls for settlers. Numerous Americans had followed in the wake of the early loyalists, attracted either by cheap lands, or by their loyalist friends who were anxious to hasten the country's development.

The tone of Upper Canadian society, therefore, was Anglo-American. Michael Smith, a Baptist minister of considerable intelligence, writing before the war, described it as follows: "One out of every twelve of the inhabitants of Upper Canada are [*sic*] natives of England, Ireland and Scotland, and all the children of such born in Canada make the proportion a little more than two out of ten. There are about an equal number of those who took part with the king in the revolution, who with their children born in Canada make about one-sixth of the inhabitants. The rest with their children are Americans."<sup>6</sup> The Scottish Highlanders, were, in fact, the only emigrants from Great Britain to the province before the war, except a few isolated individuals of the upper classes. It is important to remember, however, that no strict line can be drawn between loyalists and other Americans, unless the loyalists are taken to include only those men who had actually fought in the British army during the revolution. Of this class the largest figure given by the various United Empire Loyalist lists is five thousand nine hundred and eighty-five.<sup>7</sup>

As danger of war with the United States loomed on the horizon before 1812, the large American population of the province aroused uneasiness among the more ardent loyalists. In 1811 the lieutenant-governor was presented with a petition from the "magistrates, clergy and principal inhabitants of the eastern district," which expressed great alarm at the number of republican settlers.<sup>8</sup> In February, 1812, General

<sup>6</sup> Smith, *op. cit.*, p. 69. See also, C.O. 42/355, Memorial of Ed. Baynes, June 18, 1814.

<sup>7</sup> Cruikshank, *A Study of Disaffection in Upper Canada*, p. 42. Campbell, W., *Report on the Manuscript Lists in the Archives Relating to the United Empire Loyalists*, 1919, p. 8.

<sup>8</sup> Cruikshank, *op. cit.*, p. 15.



Brock, reporting the defeat of the militia bill, commented on the great influence possessed by settlers from the United States on the decisions of the assembly, and urged the home government to encourage emigration.<sup>9</sup>

This, however, was on the eve of the war. In normal times the social life of the province probably differed little from any pioneer community in the adjacent parts of the United States. Loyalists of wealth and social standing had not emigrated to Canada in large numbers. Such people had gone by sea to the Maritime Provinces. A few filtered, indeed, to Upper Canada, but most Upper Canadian pioneers had come overland, directly to the wilderness, having no property claims to bring before the various loyalist boards.<sup>10</sup>

As the American Revolution prevented Canada from being peopled exclusively by French Canadians, so the War of 1812 prevented Upper Canada from being filled almost exclusively by Americans. That war, between Britain and the United States, was very naturally fought out on Canadian soil where both nations had a hold upon the population. The result was not very different from what might have been expected. British troops, assisted by militia embodying the loyalist element of the population, succeeded in repelling an invasion which was never more than half-hearted on the part of the Americans, but it is also true that a large fraction of the population of Upper Canada rendered only grudging support. In the early months of the war the assembly itself was lukewarm, and two of its members turned traitor.

The war weeded out the more extreme republicans. An official list gives names of three hundred and thirty-six property owners who had voluntarily withdrawn from the province, and a single Buffalo paper gives a list of five hundred refugees.<sup>11</sup> The extreme loyalists were consequently strengthened. It was only human that later they should see evidence of disloyalty in any attempt to deprive them of their political ascendancy. The war led to a new emigration policy in England. British emigrants were now for the first time encouraged to come to Canada. Industrial depression and a

<sup>9</sup> *Ibid.*, p. 16.

<sup>10</sup> Wallace, "The Overland Loyalists," *Canadian Magazine*, October, 1914.

<sup>11</sup> Cruikshank, *op. cit.*, pp. 15, 17, and 32.



redundant population in the British Isles gave force to the movement, and Canada acquired value as an asylum for the surplus poor of Great Britain. The movement was partly assisted by government and the parishes, but was, to a large extent, voluntary. By 1837 it had completely altered the complexion of the province. The more opulent of the new settlers usually preferred to purchase lands in the older, improved districts, but most of the emigrants, being poor, took up allotments in the rear of the previous settlements, and thus filled up the gaps and increased the width of the colony.

The actual number of these settlers it is impossible to ascertain. The House of Commons' Reports did not discriminate between Upper and Lower Canada. Moreover, they failed to take into account the fact that many immigrants for the United States entered by way of Canada.<sup>12</sup> On the other hand, the British consul at New York was continually forwarding emigrants to Canada and these are not included in the estimates. The statistics give, however, an estimate of the relative numbers of English, Irish and Scots. It is well known that Scottish and Irish emigrants predominated until 1826, and a table of arrivals at Quebec from 1829 to 1836 shows that they continued to do so.<sup>13</sup> This table would indicate that the accessions to the population throughout the period (1815-37) were in favour of the Irish and Scots as distinguished from the English, in the ratio of at least two to one.<sup>14</sup> The fact becomes significant in the study of church policy. Another important consideration is that immigration was relatively light from 1820 to 1830. In 1815 the number for British North America was given as not more than 1250 ; in the succeeding ten years the numbers averaged 9000 ; in 1827 the number was 15,862 ; in 1830, 28,100 ; and in 1832 more than 51,000.<sup>15</sup> In the following year cholera checked immigration, but the figures remained fairly high until the rebellion. Without trusting the accuracy of such

<sup>12</sup> Johnson, *Emigration from the United Kingdom to B.N.A.*, p. 81 ; *A. and P.*, XXXII, 1832, *Report of Commissioners for Emigration*, March 15th, 1832.

<sup>13</sup> *A. & P.*, 1837, XLII. Buchanan's Report on Immigration, December 12, 1836.

<sup>14</sup> *Canada and Its Provinces*, vol. IV, p. 577 gives 2/3rds from Ireland, 2/3rds of the remainder from England, 1/10th of the whole from Scotland.

<sup>15</sup> *A. & P.*, XXXII, 1832, *Report of Commissioners for Emigration*,

statistics, one may utilize them as affording indication of an important fact. When we remember that new settlers ordinarily require several years to clear their land and to take out their patents, before they can be expected to become active citizens, it follows that the settlers of the 1820's would not have begun to make their weight felt in politics until the 1830's, and that the heavy immigration of the 1830's would have scarcely affected political life before the rebellion. A list of patents issued in 1836 makes this clear. The patents often confirmed grants made earlier than 1825.<sup>16</sup> Hence, though the population of Upper Canada, as compiled by the township officers, was estimated at 157,923 in 1825, at 236,702 in 1832, and at 455,688 in 1841,<sup>17</sup> politically speaking the weight of authority still rested with Loyalist and American settlers who had come to the country before the War of 1812.

There were thus two sharply defined elements contributing to the population of Upper Canada, the British and the American. Among the British post-war immigrants were half-pay officers and men of education and property. A man of this class, unlike the average settler, usually desired official recognition. If he aspired to take part in politics, one of two things was liable to happen. Either he would gain the governor's ear, and risk the jealousy of those Americans who aspired to the favour conferred upon him,<sup>18</sup> or he would find his career checked by the jealousy of the local oligarchy. If the latter proved to be his fate, he usually joined the American radicals in flinging mud at the executive.<sup>19</sup> Such men played increasingly prominent rôles in local politics, but the vast majority of British immigrants had as yet no political aspirations. They must not, of course, be lost sight of. The type created some and responded to other of the economic problems which were a constant cause of unrest; such settlers formed a field for the activities of the various missionaries; they are to be kept in mind as a great background of potentialities. To them politicians appealed for such votes as were available,

<sup>16</sup> Journals of Assembly, 1836-37, append. no. 5.

<sup>17</sup> The figures are given in the annual blue-books. The census was taken according to the provisions of a local act, 4 Geo. IV, cap. 7.

<sup>18</sup> See the case of a rebel of 1837, C.O. 42/445, John Hampden to the editor of the *Constitution*.

<sup>19</sup> Preston, *Three Years' Residence in Canada*, vol. II, p. 68; Scadding, *Toronto of Old*, p. 113; Durham Report, pp. 167-172.



and for signatures to petitions. Their presence in increasing numbers warranted a gradual transformation in the nature of Upper Canadian society. The essential feature of the period before 1837 is, however, the friction between the conservative and radical elements of the American population of the province.

With regard to the number and the type of settlers another consideration is important. All progress is relative, and in Upper Canada progress was relative to that of the United States. All observers emphasized the contrast between the northern and the southern side of the boundary line. The following observation is typical. "I lament to add my humble testimony to that of many other visitors to both countries, that the comparison is immeasurably in favour of the states ; and the fact is rendered strikingly apparent to the unbiassed observer not simply by his passing through the states on his way to Canada, but by his residing in the latter for a lengthened period, then traversing the neighbouring states, and afterwards returning to the British territory. The effect of such transition cannot perhaps be better illustrated than by supposing that you have plunged unconsciously from a stagnant pool into a vivifying stream and tumbled from the latter back again into a miry slough."<sup>20</sup> At the treaty of Ghent the population of the United States numbered eight millions ; by 1830 it was nearly thirteen millions ; by 1840 it was over seventeen millions. The proportion of increase for the whole nation was not so great as Canada's, but the expansion took place chiefly in the north-western states, some of which bordered on Upper Canada. For example, the state of Ohio, which had not come into existence in 1783, contained 937,903 people in 1830.<sup>21</sup> This was, in fact, the great era of the expansion of the middle west.

Many causes contributed to favour these western states. The chief was undoubtedly the fact that they formed mere hinterlands to a populous coast and were settled mainly by Americans moving westward, rather than by emigrants from

<sup>20</sup> Preston, *op. cit.*, vol. II, p. 39.

<sup>21</sup> Roebuck, *The Colonies of England*, p. 86 ; see also Turner, *Rise of the New West*. Censuses of the United States are given in the American Annual Register.



Europe.<sup>22</sup> To this there was no parallel in Canada. Lower Canada, with its segregated French population, contributed little to Upper Canada. It is possible that the paternalism of the British government in assisting emigrants by free grants of land, money and provisions, may have led to a certain lack of initiative. It was a constant complaint in Upper Canada that skilled labourers and men with capital nearly always preferred the United States.<sup>23</sup> The Canadian immigrant, being often unsuited for life in the wilderness, when he failed in Canada drifted naturally across the border, where there was a greater diversity of employments.<sup>24</sup> Climate, too, has always been a factor favouring the United States.

It is to these causes, rather than to the land policy of Upper Canada, that the superiority of the United States in material prosperity is to be attributed. It is true that the United States was, like Canada, in the experimental stage of land policy.<sup>25</sup> But the land policy of Upper Canada was full of mistakes which undoubtedly handicapped her development. The chief fault of the system lay in too lavish alienation of land. By 1804, 4,500,000 acres had been alienated, and by January, 1831, 8,300,000 acres, leaving ungranted only 1,537,439 acres in the surveyed townships, exclusive of crown and clergy reserves.<sup>26</sup> These sins of alienation were confined almost entirely to the period prior to 1818, or to the carrying out of pledges respecting loyalists and soldiers. After 1818 persistent attempts were made to increase the stringency of the settlement duties and to restrict free grants. By 1826 free grants to ordinary settlers had been abandoned in favour of sale, but from these regulations loyalists, militiamen and army officers were exempted, and, as these comprised the greater portion of the applicants for land, the new system had little effect.<sup>27</sup> The United Empire Loyalists, far from appreciating their grants, regarded them as pay for services rendered.

<sup>22</sup> Of 983,227 emigrants who left the United Kingdom prior to 1840, 499,899 went to B.N.A., 417,765 to the States, according to Merivale, *Lectures on Colonization*, p. 158.

<sup>23</sup> cf. Johnson, *op. cit.*, p. 176; *Canada and its Provinces*, vol. IV, p. 578.

<sup>24</sup> *Canada and its Provinces*, vol. IV, p. 579, estimates that 60 in 100 went on to the United States.

<sup>25</sup> Mavor, *A Chapter of Canadian Economic History*, p. 24.

<sup>26</sup> Richards' *Report*, 1831, p. 3.

<sup>27</sup> C.O. 42/423, Robinson to Rowan, Dec. 6, gives a table of grants, 1832 to 1833.

and resented any restrictions requiring settlement or improvement. They were in the habit of selling their allotments to speculators, or of trafficking in loyalist rights themselves, so that a large portion of the land of the province came to be held by absentees, and was unimproved and unavailable for settlement.<sup>28</sup> Meanwhile, so long as large quantities of land were being disposed of by free gift, no adequate sale price could be maintained for the rest, and the profits of sales were disappointing. The policy of crown and clergy reserves, which will be examined later, exaggerated the leading defects of the land system.<sup>29</sup>

Another point essential to a proper comprehension of social life is the extreme isolation of the province. The journey from England *via* the St. Lawrence was a tedious one of at least a month's duration, and for seven months in the year the St. Lawrence was closed to navigation. As late as 1838 the trip from New York up the Hudson to York occupied six days and three nights.<sup>30</sup> After the War of 1812 there were five posts weekly between Quebec and Montreal, and in 1815 weekly trips were arranged between Montreal and Kingston and fortnightly trips between Kingston and Amherstburgh.<sup>31</sup> For many years after the war Canadian mail was carried to Halifax and thence to England by way of the Bermudas. Under this arrangement, Dalhousie, when governor of Lower Canada, complained that despatches leaving England in November, 1821, did not reach him until the following February, while February despatches arrived in Quebec early in May.<sup>32</sup> They took two days longer to reach Montreal and were eight days on the trip from Montreal to York. Postage on a single sheet of paper from York to England, if sent by the official post, was 4s. 8d. This was prohibitive for private correspondence which found a cheaper, though illegal way, by New York in the charge of private ship owners. By this method a sheet could make its journey for about 1s. 8d. On emigrating the ordinary settler was entirely cut off from his

<sup>28</sup> Numerous papers concerning the loyalist claims are appended to a dispatch from Colborne to Stanley, May 8, 1834, in C.O. 42/418.

<sup>29</sup> For the whole subject see Paterson, *Land Settlement in Upper Canada*.

<sup>30</sup> Jameson, *Winter Studies and Summer Rambles in Canada*, p. 9.

<sup>31</sup> Smith, *History of the Post Office in British North America*, chap. 6.

<sup>32</sup> Smith, *op. cit.*, p. 121.



home, and governmental policy was affected by slow communications, for the Colonial Office was often uninformed of events in the colony until long after their political significance had passed.

Many causes other than mere distance contributed to the isolation of the people. Navigation was still primitive. On the Great Lakes flat-bottomed barges, called Durham boats, were largely used, and these, with French-Canadian bateaux, carried most of the trade of the St. Lawrence between Upper and Lower Canada. As early as 1817 a steamer plied on Lake Ontario, but dangerous rapids made steam navigation impossible on the St. Lawrence.<sup>33</sup> Throughout the period conditions improved somewhat. In 1831, Richards reported that there were one hundred sail of American small vessels, seven American steamboats and eight English small boats on Lake Erie, while on Lake Ontario there were one hundred sail of English small vessels and seven steamboats, thirty or forty American small vessels and two steamboats.<sup>34</sup> The opening of such canals as the Lachine in 1816, the Welland in 1829 and the Rideau in 1832, promoted navigation, but the indifference of Lower Canada to her part in the task of improving the St. Lawrence was a serious handicap to Upper Canada.

Absentee landlords and crown, clergy and Indian reserves, combined with a sparse population and a vast expanse of territory, made the roads of Upper Canada almost impassable, while swamps, forests, and a climate of severe extremes played their special part in isolating the inhabitants. In 1817 a stage coach ran between Kingston and York, but not until 1826 was there one between York and Niagara.<sup>35</sup> Sleighs in winter and boats in summer were the only factors alleviating the isolation of the pioneer.

The principal handicap to financial prosperity was the lack of a circulating medium. Money was so scarce in the province that British, Portuguese, Spanish, French and American coins were accepted gladly as legal tender.<sup>36</sup> During the war army bills issued in Lower Canada and coin introduced through the army eased the situation and led to a period of business

<sup>33</sup> Hopkins, *Progress of Canada in the Century*, p. 175.

<sup>34</sup> Richards' *Report*, p. 8.

<sup>35</sup> Hopkins, *op. cit.*, p. 172.

<sup>36</sup> I Geo. IV, cap. 13. Gourlay, *Statistical Account*, vol. I, p. 220.



activity and speculation, but this was merely temporary. A bank founded in Montreal in 1816-17 gave encouragement to similar institutions in Upper Canada, the most important being the Bank of Upper Canada, chartered in 1821.<sup>37</sup> The decade from 1830 to 1840 was characterized by an enthusiasm for banking institutions and a readiness to recognize paper money which was strongly censured in Great Britain.<sup>38</sup> This was due partly to the speculative spirit of the United States, but it resulted largely from a real need. Internal trade was often conducted by barter, and as the wealth of the province was almost entirely in land, it was all but impossible to raise capital upon it, in the absence of an adequate banking system.<sup>39</sup> The difficulty was enhanced by the fact that most of the merchants trading between Upper Canada and Great Britain chose to reside in Montreal, thus removing the financial centre of the province beyond her borders.

In such a state of society it was inevitable that many of the people should be ignorant and illiterate. By an act of 1807 schools had been established in each of the districts, and before the war there were also three private schools teaching Latin and Greek.<sup>40</sup> In 1816 a common school act appropriated 6000*l.* for township schools, but owing to the depression which succeeded the war this grant was in 1820 reduced to 2500*l.*<sup>41</sup> Although the people were surprisingly keen for education, it, like religion, soon became involved in the maelstrom of politics, so that progress was none too rapid. Rather unjustly, perhaps, travellers ridiculed the adult population for their extreme illiteracy. The assembly, itself, did not escape criticism. "The House of Representatives," wrote one eye witness, "is composed of 40 members, who are a motley crew of all nations, trades and professions, from the dusky blacksmith to the plodding lawyer, (who) are much better adapted to dig canals for the benefit and improvement of the province than to form laws for its government."<sup>42</sup> This judgment is certainly harsh.

<sup>37</sup> Act passed 1819, cap. 29; royal assent, April, 1821.

<sup>38</sup> *Canada and its Provinces*, vol. IV, pp. 612-628.

<sup>39</sup> An interesting letter on the subject is to be found in C.O. 42/454, Wm. Banks to Glenelg, Oct. 23, 1838.

<sup>40</sup> Smith, *op. cit.*, p. 61.

<sup>41</sup> 56 Geo. III, cap. 36 and 60 Geo. III, cap. 7.

<sup>42</sup> Talbot, *Five Years' Residence in Canada*, vol. I, pp. 401-4; cf. Jameson, *op. cit.*, p. 35.

It is to the credit of the province that as early as 1830 it could boast twenty newspapers.<sup>43</sup> On the whole, however, the political life of the period reflects the lack of education of the people.

It is necessary to bear in mind these aspects of pioneer life because they influenced political history. They formed the mould, not only of events, but of the character of the people. The psychology of a pioneer society has a story all its own. It would seem that isolation produces at its best a sturdy independence, and at its worst an intense egoism, a super-sensitiveness to criticism and a lack of appreciation of culture. This in turn proves fatal to co-operation, giving rise to factions in politics and to sects in religion. Personal feuds and an indecent acrimony in spoken and written language tend to prevail in a society cut off from the main stream of civilization. The monotony of life demands relief, and finds vent spasmodically in outbreaks of intense emotionalism. Religious revivals and election riots are common among pioneers. An innate fear of deterioration from their former moral and social standards breeds conservatism in the small minority of educated people, and in Upper Canada this class was conventional to the point of tyranny.

All these characteristics were observed and commented upon, usually unfavourably, by travellers visiting the province. These seldom manifested insight, and all the evils of the little society were commonly attributed to its democratic tendencies. Prejudiced already against democracy by the long wars with France and the United States, the British ruling classes, in both church and state, felt that their mission in Canada was to curb democracy, and the conviction was the source of much misunderstanding and hard feeling.

<sup>43</sup> Caniff Haight, *Life in Canada Fifty Years Ago*, p. 188.



## CHAPTER II

### THE GOVERNMENT OF UPPER CANADA

THE constitutions of the Canadian provinces, like the constitution of Great Britain, are the result of long periods of growth from expediency and are not recorded in a single document. In the Canadas, indeed, certain features of the constitution were deliberately copied from the standard type of government which had evolved in the old colonies to the south, and these features were embodied in an act of parliament. But the act (31 Geo. III, cap. XXXI), though it came to be regarded in the Canadas as the "Constitutional Act," was in reality only the corner-stone of the constitution. It created in each province a legislature consisting of a nominated council and an elected assembly, and defined the qualifications for membership in each chamber, but it mentioned both the governor and the executive council only incidentally. It laid down a few rules of legislative procedure, such as the crown's prerogative with regard to colonial acts, and it granted certain powers specifically to the governor, and "such executive council as shall have been appointed for the affairs of the province," but these rules and grants were far from complete. The act provided a court of appeal, but it left the other courts as they had been established by ordinances of the province of Quebec. It devoted elaborate clauses to the reservation of lands for a Protestant clergy, but it made no mention of reserves for the crown, though these were provided for under the governor's instructions, and from the beginning were set aside in the same manner and to the same amount as the clergy reserves. The act laid down certain regulations with regard to the alienation of lands and the regulation of trade, but these regulations were quite incidental and not more important than were later proclamations of the governor and other and also later acts of the imperial parliament. For any adequate

comprehension of the constitution, therefore, we must resort to the early ordinances of the province of Quebec, to the instructions sent to the various governors, to the proclamations of the governors, to other acts of the imperial parliament and to the common law and parliamentary practice of Great Britain.<sup>1</sup>

The most complicating feature of the government of Upper Canada was its strict subordination to that in Great Britain. Its local executive was but an outlying branch of a bureaucracy which had its headquarters in the Colonial Office in London. Even in relation to Lower Canada, Upper Canada had separate, autonomous existence in only a very confined sphere. Her trade was regulated by acts of the imperial parliament and by acts of the parliament of Lower Canada imposing duties, so that the local acts regulating inland navigation were relatively insignificant. Her postal service was an integral part of the imperial postal service for British North America, and was subject to the postmaster-general at Quebec. Her military affairs, excluding those of the militia, were directed from England by the War Office, through the governor-in-chief, who was also commander-in-chief for the Canadas. From 1815 to 1828 the Indians within her borders were under the commander-in-chief.<sup>2</sup> Even as regards immigration, the commander-in-chief controlled the military settlements along the Rideau River. In ecclesiastical affairs Upper Canada was, throughout the period, subject to the Bishop of Quebec and was not constituted even an archdeaconry until 1828. Within the narrow sphere which remained, however, the upper province was entirely independent of Lower Canada, unless the governor-in-chief chose to reside in person in Upper Canada, a step not taken by any governor before the rebellion.<sup>3</sup> But though the power of legislation of the Upper Canadian assembly was strictly limited, it did not scruple to exert its right of criticism over every branch of the administration, this being an obvious means of enhancing its own importance.

At the head of the provincial administration stood the lieutenant-governor, always a military officer from Great

<sup>1</sup> See also *Canada and its Provinces*, vol. IV, pp. 423-5.

<sup>2</sup> *Canada and its Provinces*, vol. IV, p. 723 ; C.O. 43/42, Murray to Colborne, Dec. 4, 1828.

<sup>3</sup> *Canada and its Provinces*, vol. IV, pp. 444-8.



Britain, appointed by commission under the sign manual during pleasure. His private secretary, a very important official, usually came with him from Great Britain, but the other officials were commonly Canadians. From the Colonial Office the governor received definite instructions, and with it he corresponded in detail. An executive council was appointed according to the governor's instructions.<sup>4</sup> All councillors were selected by the governor, with the confirmation of the Colonial Office. Each councillor was sworn to secrecy. Five received a salary of 100*l.* per annum each; the other councillorships were regarded as purely honorary. Until 1826, when the office of commissioner of crown lands was created, the council had the entire supervision of the land-granting department.<sup>5</sup> It was also charged with auditing accounts, and it heard appeals from the court of King's Bench. It could assemble only on summons from the governor and could sit only in his presence. It did, in fact, hold informal meetings, at which it transacted most of its business in the governor's absence, but its procedure on these occasions had always to be confirmed by a regular meeting. By the Constitutional Act and by several provincial acts the governor was required to consult his council and to act on its advice on a few specified questions such as the erection and endowment of parsonages and the establishment of ports of entry. On other matters the governor could seek his council's advice or ignore it at will.

The executive council was quite distinct from the various officials comprising the civil establishment.<sup>6</sup> Of these the attorney- and solicitor-general were usually elected to the assembly but were never appointed to the council. The chief justice was the only judge called to the council. In 1815 the receiver-general was a member of the council, but the surveyor-general, the secretary and the registrar had no seats. These were the chief officials acting under commissions from Great Britain. The inspector-general of public accounts was appointed under the privy seal of the lieutenant-governor and

<sup>4</sup> *House of Commons' Report*, 1837, XXIV. Report of Commissioners for Lower Canada on the Executive Councils.

<sup>5</sup> C.O. 43/42, Goderich to Maitland, Aug. 30, 1827.

<sup>6</sup> Gourlay, *Statistical Account*, vol. 2, append. LXXXIX. C.O. 42/359, Smith to Bathurst, Nov. 1. *A. & P.*, 1814-15, IX, Civil Establishment of Upper Canada,

was a member of the council. The office of auditor-general of land patents, an appointment under the lieutenant-governor, was held by the receiver-general. The commissioner of crown lands, when appointed in 1826, was given a seat in the council. The Bishop of Quebec, though a titular member in 1815, resided in Lower Canada and was consequently incapacitated from attendance. Clergymen might sit in the council and John Strachan, when appointed Archdeacon of York in 1828, did not vacate his seat. The executive council was, therefore, a mixed body of official and non-official members, all of whom usually, though not invariably, sat also in the legislative council.

The legislative council was the colonial counterpart of the House of Lords. Its composition was defined by the Constitutional Act, which empowered the governor to summon not fewer than seven members who should hold their seats for life unless they vacated the province or turned traitor. Permissive clauses of the act authorized the attachment of hereditary titles to seats in the legislative council, but from the outset this was recognized as impracticable.

The council comprised as high an order of talent and influence as the province afforded. Nearly all the executive councillors were included in its membership, the chief justice being its permanent speaker, and those who had filled the office of chief justice retaining their seats after retirement. Except for the attorney- and the solicitor-general all the public officers held seats. In 1829, before the council was remodelled, and when complaints of its inefficiency were at their height, it comprised the five senior executive councillors, four of whom held other important offices, the receiver-general and one former receiver-general, two retired chief justices, the secretary and registrar, the bursar and registrar of King's College, and several minor officials.<sup>7</sup> Among the members described by the governor as holding no offices we find the name of William Allan, a gentleman who was in reality a collector of customs, postmaster of York, president of the Bank of Upper Canada, inspector of licences, treasurer of his district and police magistrate.<sup>8</sup> All the other members, to the total of eighteen,

<sup>7</sup> C.O. 42/489, Colborne to Murray, Aug. 17, 1829.

<sup>8</sup> C.O. 42/374 (a newspaper clipping).



were well-to-do landowners. The attendance at council meetings, however, as revealed by the journals, was not good, and the official members who resided at the capital possessed an influence greater than was attributable to their numbers.

Owing to the legal element in the council, it was responsible for initiating most bills instituting legal reforms, and to it the governor usually entrusted the introduction of government bills. But its chief and constant function was a reconsideration of the bills sent up by the assembly. It was here that the executive influence was felt to such an extent that no measure disapproved of by the executive was allowed to pass the council. The governor was thus relieved of the responsibility of rejecting bills, and the council bore the onus of the unpopularity which resulted from constant rejections. In the council's defence it must be urged that, owing to the absence of any organized party system or government leader, many of the bills originating in the assembly were crude and impractical. A common practice was to exalt to the council those members who had been the most prominent supporters of the government in the lower house, and this practice probably lent an added animosity to the always unfriendly spirit between council and assembly.

The assembly consisted at the outset of sixteen members returned from the nineteen counties into which Simcoe had divided the province in 1792. Changes in the counties were effected by acts of the legislature as the province increased in numbers. In 1816 there were twenty-six members. Then, in 1820, an important provincial act was passed.<sup>9</sup> Every county having a population of one thousand was given one member, and those of four thousand, two members. Towns of a thousand were to be regarded as distinct units. Under this act the representation at once rose to forty members, from twenty-seven electoral districts of which York and Kingston were the only towns. Almost every session saw a revision of the boundaries of the districts and an increase of counties and of membership, so that by 1836 there were forty electoral districts, of which six were towns, returning a total of sixty-nine members. In consequence, though representation was not strictly according to population, it was probably as nearly so as was conveniently

<sup>9</sup> 60 Geo. III, cap. 2.

possible in a rapidly growing colony.<sup>10</sup> The electoral qualification defined by the Constitutional Act was the forty shilling freehold in the country and the 5*l.* freehold or 10*l.* copyhold in the towns. A property qualification of 80*l.* was required for members of the assembly by an act of 1818.<sup>11</sup> Clergy of the Churches of England and Rome and members of the legislative council were excluded from the assembly by the Constitutional Act. The governor appointed the returning officers in each district. Voting was *viva voce*, the polls being open for several days according to the English practice. Trial of disputed elections was regulated by provincial acts and was in the hands of the assembly. The speaker of the assembly was elected by the members and always reflected the prevailing temper of the house. Not a sign of party division was apparent in 1815. Each assembly sat for a period of four years unless previously dissolved by the governor.

Such a representative body, as democratic as those of the thirteen colonies had been, was far removed in spirit from the unreformed House of Commons. It was a constant source of ridicule among the British visitors to the province, and was usually spoken of by provincial governors in tones of depreciation. Its debates often exhibited a crudity of argument and a degree of personal rancour ill-suited to a legislative body. But the house was undoubtedly a faithful reflection of the weaknesses and strength of the electorate.

The position of the judicature of Upper Canada can here receive little attention. The first two acts on the statute book introduced English civil law with certain restrictions, and established trial by jury. The third enabled the justices of the peace in quarter sessions to sit as courts of request in matters up to forty shillings. An act of 1793 (cap. 8), established a court of probate and surrogate in each district. The superior courts were defined by an important act of 1794 (cap. 2), which provided for a chief justice and two puisne judges commissioned from England. Another act of the same year established district judgeships for the trial of cases from forty shillings to 15*l.* The tenure of office of the judges was

<sup>10</sup> A list of the members of each parliament and the districts which they represented is given by Wilfred Campbell, *Reports of the Royal Society of Canada*, 1910.

<sup>11</sup> Cap. 9.



during pleasure only. Although no law prevented the appointment of judges to the councils, in practice in Upper Canada only the chief justice held a seat. Fees in the superior courts were regulated by the judges, but those of the inferior courts were specified in provincial acts.<sup>12</sup>

In contrast to her French neighbour Upper Canada was not long in establishing a rudimentary system of local government. The early legislators naturally used for their model English local government as they found it before the Reform Act of 1832, with town meetings, justices of the peace, sheriffs and county lieutenants, most appointments being held of the crown and conferring social prestige. The judicial division was the district. Only four in 1791, they had increased to fifteen by 1840. In each the governor appointed a judge and a sheriff. The districts were surveyed into townships. The parliamentary division was, however, the county, which was also the unit for militia. By an act of 1793 the freeholders of townships were to assemble for the purpose of electing assessors, collectors, overseers of highways, poundkeepers and town wardens.<sup>13</sup> The most important powers of local government were intrusted, as in England, to the justices of the peace in quarter sessions. They assessed local taxes for the payment of members of the assembly and for various other objects of local government specified in provincial statutes; they appointed and supervised the treasurers of districts; they superintended the laying out of highways, the building of gaols, the regulation of ferries and markets, the sale of liquor licences, and, in fact, practically all matters of local government. It was only gradually that a few towns gained the privilege of incorporation and were thus emancipated from the clumsy government of the quarter sessions. The justices were appointed by the lieutenant-governor and formed an important source of executive patronage, but their powers were in no way arbitrary, being delegated to them by acts of the provincial parliament too numerous to mention.

Simcoe, the first lieutenant-governor, had intended that county lieutenants, rather than justices of the peace, should

<sup>12</sup> See also *Canada and its Provinces*, vol. IV, pp. 457-8.

<sup>13</sup> Cap. 2; see also Bourinot, *Local Government in Canada*, Royal Society of Canada, 1906.

command the highest governmental prestige. An elaborate militia act of 1793 (cap. 1) established the governor as head of the provincial militia. He was to appoint a lieutenant in each county, who, in turn, was to select deputy lieutenants, colonels, lieutenant-colonels and majors, all to be substantial property owners. But a later act made no mention of county lieutenants and allotted the appointment of officers to the governor.<sup>14</sup> The leading militia officer was to bear the title of adjutant-general of militia and was to be appointed by the governor. No further references to the county lieutenants are made in the state papers, the office probably falling into disuse and with it the only attempt to establish a provincial aristocracy.<sup>15</sup>

Finance is the mainspring of governmental machinery and the chief cause of friction or of harmony. In Upper Canada it was an exceedingly complicated matter. In 1815 the revenue was derived from four distinct sources. First came customs duties from Lower Canada. These duties, a constant source of friction, must be postponed for later discussion.<sup>16</sup> Before 1819 the average annual receipt from them was about 18,000*l*.<sup>17</sup> They were applied through the governor to meet the expenses of civil government and were beyond the control of the legislature. Another large source of income was known as the casual and territorial revenue, or the "king's rights." This consisted of rents from mills and ferries, fees for instruments under the great seal, and of the revenue from crown lands.

Previous to the rebellion the revenue from crown lands was the greatest source of friction in the province. The British crown claimed absolute control over it on the theory that in a new country the land belongs to the government from which had come the people settling it. "It must, we apprehend, be the main object in every scheme of colonization, that the parent state should have the right to establish her own people on such terms as she may think fit in the country colonized; and at present perhaps her North American colonies are more valuable to England as receptacles for her surplus population

<sup>14</sup> 48 Geo. III, cap. 1.

<sup>15</sup> See also Doughty and McArthur, *Constitutional Documents*, pp. 198-200.

<sup>16</sup> See below, Chap. IV.

<sup>17</sup> C.O. 42/374, Strachan to Horton, March 28.



than any other way," runs a parliamentary report of 1837.<sup>18</sup> This was the policy applied in all the colonies, and it was the logical expression of the idea at the base of English law, that all land in the king's domains belongs in the first instance to the king. In theory it is not unreasonable that the colonizing country, rather than the small number of colonists who happen to be the first arrivals, should control the public land for future immigrants, but in practice it always happens that no sooner is a body politic organized in a territory than it begins to feel a proprietary right over all the lands within its bounds. The difficulty arises from the fact that imperial and colonial interests and ideals seldom coincide. It was an ideal of the British government to establish the Church of England in the Canadas as a powerful institution, and one-seventh of the crown lands was set aside for this purpose, though, from the outset, the colonists as a whole disapproved of the principle of an established church.<sup>19</sup> This was one source of friction. Another arose from the fact that, since the loss of the thirteen colonies, the policy of the Colonial Office was largely dictated by a fear lest Great Britain should lose the remainder of her empire in the same way. The emphasis on maintaining the imperial connection was a large factor in Canadian government, but it tended to defeat its own purpose. In each township crown reserves were set aside on the same basis as that of the clergy reserves, the purpose being to relieve the people of direct taxation and thus to reinforce their loyalty. The device of leasing the reserves proved unsuccessful, and little revenue was derived from them until, in 1826, the Canada Company was incorporated and took over 1,384,413 acres of crown reserves, with 1,100,000 acres of wild lands in a block on Lake Huron. In return the company paid an average of about 17,000*l.* a year for the next fifteen years.<sup>20</sup>

Except for one-third of these instalments, which the company could expend on public improvements, this money was applied, with the duties from Lower Canada, to meet the civil expenses of the province. It also formed a fund from which to pay such incidental charges as it was not considered politic to

<sup>18</sup> *H. of C. Report*, 1837, XXIV, p. 20.

<sup>19</sup> See below, Chap. VI.

<sup>20</sup> *Journals of Assembly*, 3rd session, 13th parliament, appendix, Report on the Canada Company; see also *Canada and its Provinces*, vol. IV, p. 514.

bring before the legislature, notably pensions, emigration expenses, the maintenance of King's College, and aid to various churches. But this money was only available after 1826. Until then the king's rights were relatively unimportant.

The system of allotting crown lands was so efficacious from a financial point of view that in 1828, 1829 and 1830 the governor was not compelled to call on the legislature for a penny to meet the expenses of the civil administration. The church also was richly endowed. As early as 1798, 549,000 acres of land had been set aside for education.<sup>21</sup> Land was granted as a reward for public services, each executive councillor receiving six thousand acres in 1797.<sup>22</sup> The assembly, like the executive, preferred to pay by using land reserves rather than by taxation, and did not hesitate to appeal for grants of land for every conceivable purpose. Their only complaint was against appropriations for such purposes as they did not approve. But it is doubtful whether such reserves of land are not too expensive a burden upon the people to justify any extensive resort to them for any purpose. When first set aside they command little value and fail to supply a substitute for pecuniary levies; as population increases reserves hinder the progress of occupied tracts in the vicinity, and when the country is well populated they usually command a value greater than was intended by the original grant. Prior to 1837 the extensive reservations of land in Upper Canada formed a principal bar to economic progress, and thus played an important part in the history of political unrest.

A third source of revenue arose from taxation under acts of the provincial legislature. This was confined to licences, militia fines and certain duties on imports overland from the United States. There was no direct taxation except that levied by the quarter sessions. The local legislature had, therefore, very limited funds at its disposal. Not until 1816 did it vote a permanent annual grant of 2250*l.* towards the civil service, which was henceforth accounted for with the rest of the crown revenue beyond the assembly's control. The only control which it exerted over the executive was by means of a grant of the annual expenses to cover the con-

<sup>21</sup> Hodgins, *Documentary History of Education*, vol. I, pp. 11-20.

<sup>22</sup> C.O. 42/361, Smith to Bathurst, Feb. 10.



tingencies of the executive departments and of the law courts. Most of its money went to promote public works, militia pensions, schools, and other unofficial undertakings. It is obvious that a legislature with no greater powers of taxation than the assembly of Upper Canada possessed in 1815 could be little more than a debating society and a place for airing grievances.

Provincial expenditure not provided for in any of the above ways in 1815 was advanced by the imperial parliament. Most of this expenditure was paid from the military chest. British troops for the two Canadas numbered over 9000 in 1816, but were reduced to a peace footing of about 3000 in 1820. There were many military officers on half-pay settled in the colony after 1815, and the lieutenant-governor received his pay as an officer in addition to his civil salary.<sup>23</sup> The total military charge for the two Canadas was as high as 163,834*l.* in 1836, in a time of profound peace, and rose to 900,000*l.* in 1841 when there was danger of war with the United States.<sup>24</sup> The civil establishment of Upper Canada cost Great Britain 9320*l.* in 1815, including a grant of 1885*l.* to the Society for the Propagation of the Gospel in Foreign Parts. The whole burden of the civil expense was removed, however, in 1826, by the formation of the Canada Company, the Indian department alone being retained at an annual charge of about 16,000*l.* for Upper and Lower Canada.<sup>25</sup> Great Britain also paid the full expense of the construction of the Rideau Canal. The post office department of the Canadas was under the postmaster-general in London, but, unlike the other departments, it yielded a surplus revenue to the British treasury. For this reason most Canadians were clamorous for its surrender to provincial authorities, on the plea that otherwise Canada was being illegally taxed for the benefit of Great Britain.<sup>26</sup> The large expenditure made by Great Britain on behalf of Canada was invariably ignored by colonial radicals. As the period advanced Upper Canada gradually

<sup>23</sup> *H. of C. Reports*, VI, 1834, p. 223.

<sup>24</sup> *A. & P.*, XXXIV, Return of Charges Occurred on Account of the Canadas.

<sup>25</sup> *Estimates and Accounts*, *passim*.

<sup>26</sup> Smith, *History of the Post-Office in British North America*; *A. & P.*, 1836, XXXIX, Abstract of Revenue and Expenditure for the Colonies.

assumed all except her military expenses, but even then, had she not been dependent on Great Britain for defence, she must have been thrown ultimately into the arms of the United States. There could have been no question of independence for the province before 1837, and on the principle that the power that pays must also govern the subordination of Canada to Great Britain was justified even in theory. On the other hand, the province was entitled to increased autonomy corresponding to the increase in the financial burden which it assumed during the period, and the rigidity of the constitution did not make a gradual readjustment of powers between the local legislature and the imperial executive easy to achieve.

Partly because of the mixed character of the sources of revenue and partly because a thoroughly satisfactory system had not been evolved for the imperial government, Upper Canadian accounts were extremely complicated. There was no consolidated fund, and, as the revenue passed through the hands of a series of subordinate officials, each set deducted its own expenses and merely handed over the surplus to the receiver-general.<sup>27</sup> This official kept the revenue divided into compartments according to its origin, as for example, the Canada Company's payments, the casual and territorial revenue, etc. Each of these branches of revenue had its special items of expenditure attached. If there was a surplus in one branch it was transferred to another branch without special mention in the accounts. The result was often confusing. Moreover, expenditure was no more consolidated than revenue, so that many of the public officials received portions of their salaries from more than one source. For example, in 1817 the governor, exclusive of his pay as a military officer, received 2000*l.* from the grant of the imperial parliament, and 1000*l.* from the crown revenues.<sup>28</sup> The attorney-general in 1817 was paid 300*l.* from the imperial grant and fees to the amount of 950*l.*, currency of which 900*l.* was paid from the provincial treasury, and 50*l.* by the grantees of crown lands. Hence it is necessary to go through all the branches of expenditure in order to find the salary of any official, and even then no

<sup>27</sup> The public accounts may be seen in the appendices to the Journals of the Assembly. See also Seventh Report on Grievances, append. 56 to 60.

<sup>28</sup> C.O. 42/359, Smith to Bathurst, Nov. 1.



account will be made of military pay, or post office, Indian and purely local appointments. The provincial funds were audited by the inspector-general of public accounts, and were submitted to the executive council and assembly, but before 1830 the assembly did not regularly see the accounts of crown revenues. There were constant complaints of delay in transmission and of inaccuracies and omissions in the text of the blue books transmitted to England.<sup>29</sup> The complaints were rather of slovenly work than of misappropriation, there being no serious charge of malversation throughout the period.<sup>30</sup>

Weaknesses in the administration of finance, such as these, were bound to evoke criticism. Moreover, in estimating the scale of salaries suitable for officials in the Canadas, the British government faced a dilemma. Salaries were low in the United States. In 1833 the puisne judges of the supreme court received but nine hundred dollars, the chief justice but five thousand, and the president of the republic himself but twenty-five thousand. As for a state governor, whose position corresponded most closely to that of a Canadian lieutenant-governor, the average salary was less than two thousand dollars.<sup>31</sup> The United States was wealthier than Canada and, if the salaries of provincial officials exceeded the American scale, the American population of Upper Canada would inevitably accuse the British government of mismanagement and extravagance. But what was the Colonial Office to do? Salaries of officials in England before the Reform Act were on a scale suited to the social position of those who held them and, unless the British scale of remuneration was applied to the colonies, no man of the requisite ability or rank could have been persuaded to submit to the hardships of a remote, pioneer colony. Sir John Colborne, the most able of Upper Canadian governors, received a salary of 3123*l.*, equivalent to more than \$15,000, besides 1052*l.* for military pay, fees of office, and allowance for residence, a heavy burden upon the provincial revenue. When, however, the governor's allowance was reduced after Colborne's retirement, a suitable successor

<sup>29</sup> For example, C.O. 42/415, Colborne to Stanley, Oct. 2; C.O. 42/425, Draft to Colborne, June 5, and Mackenzie, *Sketches of Canada and the United States*, pp. 436-492.

<sup>30</sup> See also Preston, *op. cit.*, vol. II, p. 60.

<sup>31</sup> American Annual Register, 1832-3, Civil List of the U.S.

could not be found. It is true that very few of the provincial officials were appointed from Great Britain, but when the governor received a high salary, it would have been futile to expect other officials to accept amounts disproportionately small. Accordingly, the Chief Justice of Upper Canada received 1500*l.*, and the puisne judges 750*l.*<sup>32</sup> These and other rewards dazzled the eyes of a rather poverty stricken population, who either grabbed eagerly for them or looked with jealousy upon their possessors.

The question of the extent of the patronage of the governor is important. He virtually appointed the executive and legislative councillors, the judges of the King's Bench, and the heads of executive departments. He appointed all the officers of the legislative council and assembly, except the speaker of the assembly. He appointed a sheriff in each district, justices of the peace, coroners, judges of the district courts and of the surrogate courts, registrars of counties, clerks of the peace, and commissioners of customs. Immigration officers in the various districts were his nominees. After 1828, the whole of the Indian establishment was at his command. As head of the provincial militia he appointed one thousand five hundred officers. In the days of free grants of land an unexampled source of patronage had been provided, the effect of which was still apparent in 1815. Even after 1815 grants to militia officers could be withheld at the governor's pleasure. The crown revenues were at his command for pensions, aid to churches, etc. After the foundation of King's College and Upper Canada College the governor selected their staffs. He also appointed district boards of education.<sup>33</sup>

The above array of appointments was not quite so formidable as it sounds. Many of the posts carried a mere pittance, and the very multiplicity of the appointments must have prevented a close supervision of the minor appointees. Still the government patronage undoubtedly carried great weight in politics.<sup>34</sup> It is a matter of note that petitions supporting

<sup>32</sup> C.O. 42/417, Mackenzie's paper on the Administration of Justice; Seventh Report, pp. ix-xiii. *H. of C. Reports*, 1834, VI. Army in Canada: Colborne's salary had been 399*l.* in 1830. See *A. & P.*, 1833, XXVI. Offices abolished and reduced.

<sup>33</sup> See Seventh Report on Grievances, append. 17-60.

<sup>34</sup> Talbot, *op. cit.*, vol. I, p. 416.



the government were usually headed by a list of magistrates. Most of the minor appointments were during pleasure only, and insecurity of tenure always carries with it a certain servility. Though the majority of these appointments had been placed in the hands of the governor by local acts in the first twenty years of the history of the province before an opposition had arisen in the assembly against the executive, and though the power of the governor became intensely unpopular in later years, yet, on account of opposition of the legislative council, no amending acts could be carried introducing the elective principle. For example, the jury laws of the province left the impanelling of juries entirely in the hands of the sheriffs, and though numerous complaints were made of the danger of this power being used arbitrarily, all legislative amendments were defeated in the council.<sup>35</sup> In this matter of patronage as in all other matters Upper Canada was open to contrast with the United States, where the elective principle was being tried even in the judgeships of state courts.

In this sketch of the government of Upper Canada no mention has yet been made of an extra-constitutional term much in vogue in all histories of this period, namely, the "family compact." Much has been written on this subject and much speculation has been expended on the problem as to what the "family compact" was and when it originated. The first known use of the term was in a letter written to Dr. Baldwin by M. S. Bidwell in 1828, where he spoke of the "evils which a family compact have brought upon us."<sup>36</sup> The term was popularized by W. L. Mackenzie. In a book of 1833 Mackenzie enumerated a list of public officials, showing their family connections. He declared that this list included all the judges, half the executive council, the speaker and eight members of the legislative council, the officers of the Canada Company, the president and solicitor of the bank and half the directors. He concluded: "This family compact surround the lieutenant-governor and mould him like wax to their will; they fill every office with their relatives, dependents and partisans; by them justices of the peace and officers of the

<sup>35</sup> C.O. 42/414, Colborne to Goderich, May 18; C.O. 42/417, Mackenzie to Goderich, Jan. 28.

<sup>36</sup> Wallace, *The Family Compact*, chap. I.

militia are made and unmade ; they have increased the numbers of the legislative council by recommending through the governor half a dozen of nobodies and a few placemen, pensioners and individuals of well-known narrow and bigoted principles ; the whole of the revenues of Upper Canada are, in reality, at their disposal ; they are paymasters, receivers, auditors, king, lords and commons.”<sup>37</sup> Another reformer, writing in the same year, expressed much the same idea. “ The executive council, since the foundation of the colony, has been either filled by the same persons or by the accession of others as some were pensioned off, who only served to enlarge and strengthen a family compact, and sustain whatever abuses added to their wealth, their family aggrandisement and their impunity of office. The effects of such a monopoly upon the men themselves as well as upon the community governed by them are not so easily described or detailed, as they are practically felt everywhere and in everything.”<sup>38</sup> The phrase was a conventional newspaper catchword and was so used previous to the rebellion. As such it was picked up, probably by Charles Buller, and was defined in a famous passage of Lord Durham’s Report :

“ But in none of the North American Provinces has this exhibited itself for so long a period or to such an extent, as in Upper Canada, which has long been entirely governed by a party commonly designated through the province as the ‘ family compact,’ a name not much more appropriate than party designations usually are, inasmuch as there is, in truth, very little of family connexion among the persons thus united. For a long time, this body of men, receiving at times accessions to its numbers, possessed all the highest public offices, by means of which, and of its influence in the executive council, it wielded all the powers of government ; it maintained influence in the legislature by means of its predominance in the legislative council ; and it disposed of the large number of petty posts which are in the patronage of the government all over the province. Successive governors as they came in their turn, are said to have either submitted quietly to its influence, or, after a short and unavailing struggle, to have

<sup>37</sup> *Sketches of Upper Canada and the United States*, p. 409.

<sup>38</sup> C.O. 42 /416, Thomson to ?, May 24, 1833.



yielded to this well-organized party the conduct of affairs. The bench, the magistracy, the high offices of the Episcopal Church, and a great part of the legal profession, are filled by the adherents of this party : by grant or purchase they have acquired nearly the whole of the waste lands of the province ; they are all-powerful in the chartered banks, and, till lately, shared among themselves almost exclusively all offices of trust and profit. The bulk of this party consists, for the most part, of native-born inhabitants of the colony, or of emigrants who have settled in it before the last war with the United States ; the principal members of it belong to the Church of England, and the maintenance of the claims of that Church has always been one of its distinguishing characteristics.”<sup>39</sup>

This was a partisan statement adopted directly from the Upper Canadian radicals. The legislative council took up the cudgels against what it considered to be an insult. It pointed out that Durham himself had denied that there was much family connection between the members of his so-called family compact ; that he had made no objection against them on grounds of ability or patriotism. “ He does not question their loyalty and he admits that they are numerous and possess much property and great influence, but that in consequence of their having monopolized the power and patronage of the government, they have excited envy, and have ultimately provoked attack.” So numerous a body could not be called a compact. The council maintained that none of Simcoe’s followers were still alive, that few had been appointed to situations of profit and honour, and that none had succeeded to their father’s vacant offices, that the patronage of the crown had been spread among all classes without the slightest regard to family or hereditary claims. For example, in 1838, the vice-chancellor, master and registrar of the court of chancery, the receiver-general, the secretary of the province, the solicitor-general, four out of five executive councillors, two-thirds of the clergy of the Church of England, two-thirds of the district schoolmasters, the principal and all but one of the masters of Upper Canada College, had been chosen among British and Irish settlers.<sup>40</sup>

<sup>39</sup> *Report on the Affairs of British North America*, pp. 147-8.

<sup>40</sup> *Journals of the Council*, 1839, Append., Report of Select Committee on the State of the Province.

From Durham's Report and the council's refutation dates the controversy as to what the family compact really was. Most writers took sides according to their political predilections. Bonnycastle, writing in 1841, described it as a self-constituted aristocracy composed of the earliest settlers holding public appointments.<sup>41</sup> Preston maintained that an intolerant, exclusive spirit was the basis of the compact ; that its centre was at Toronto, but that its ramifications extended throughout the province and were cemented by ties of relationship.<sup>42</sup> Mrs. Jameson wrote in 1838 of the "petty colonial oligarchy, the self-constituted aristocracy, based upon nothing real nor even upon anything imaginary."<sup>43</sup> And so on *ad infinitum*.

Any attempt to define the "family compact" as one might define the legislative council must defeat its own purpose, since the term stood for a tendency of society rather than for a definite organization. It was a term of reproach to designate those holders of the public offices and their friends, who would have been called tories in England, since they took their stand against the rising tide of democracy and usually supported an established church. As the loyalist element predominated in the early settlements and as most of the loyalists had proved themselves conservatives, they contributed their quota to the ranks of the tories, but the large majority of the people who called themselves loyalists had no connection with the executive. The real basis of the compact was wealth, education and social standing. The governors of the province complained continually that the number of people eligible for appointment to government offices was very small. We have seen that only a comparatively few settlers in Upper Canada were descended from the old aristocracies of the English colonies. To these few men, of education, social distinction and conservative tendencies were allotted the appointments in the patronage of the governor. As such posts were numerous and the field of choice was circumscribed, plurality of office became the rule.<sup>44</sup> This meant that the principal office-holders

<sup>41</sup> *The Canadas in 1841*, p. 170.

<sup>42</sup> *Op. cit.*, vol. II, p. 51.

<sup>43</sup> *Winter Studies and Summer Rambles*, p. 99.

<sup>44</sup> Gourlay, *Statistical Account*, vol. II, Append. LXXXIX. C.O. 42/389, Colborne to Murray, Aug. 27. See also Edgar, *Ten Years in Upper Canada in Peace and War*, for offices held by Thos. Ridout.



received greater salaries than were attached to single appointments. Many of these early officials also received generous allotments of land. For example, John Strachan had been granted 3,202 acres before 1816; John McGill 5,560 acres; W. D. Powell and family 10,903 acres.<sup>45</sup> As these men were among the few who possessed capital, they soon extended their influence to control the chartered banks and the great private companies engaged in public works, such as the Welland Canal Company. Thus was introduced a governmental element into the capitalistic enterprises of the colony which was the subject of much adverse criticism. Moreover, the members of the official party were brought by their business and inclinations to the larger towns, especially to York and to Kingston, where their families, being few in number, had no choice but to intermarry. It is futile to deny that the leading families of the province were connected by bonds of kinship, although it is to be said to their credit that few instances can be found of abuse of that relationship.

The organization of the government intensified the social and intellectual division, for it left a complete gap and a barrier of hostility between the executive and the assembly. Because the elected assembly had not the slightest control over the local executive, the personnel of the executive seldom changed except on the death of one of its members. During most of the period, indeed, upper classes the world over were dominated by the conservative reaction after the American and French Revolutions, and it was natural for government to be composed wholly of tories. If the people tended more and more to push men of liberal political ideas to the foreground, it is not surprising that the old tories looked askance at these upstarts. What possessors of power in human history, from the time of the Roman patricians to the British reform acts, have been willing to sacrifice their own ascendancy to the clamour of a popular majority? The Upper Canadian officials wrapped their robes of office tightly about them, and had to submit, willy nilly, to the popular nickname, the family compact. In Lower Canada, under similar conditions, the situation was even worse, for there a racial division was added

<sup>45</sup> Seventh Report, Append. 83. *New Almanac for the Canadian True Blues*, *passim*. Paterson, *Land Settlement in Upper Canada*, pp. 62-63.

to the political and social one. In the Maritime Provinces, however, aristocratic loyalists were much more numerous in proportion to the population, the tone of society as a whole was more conservative, and friction did not develop to the same extent.

The logical defects of the government of Upper Canada are too obvious to need further comment, but logical defects have never worried British communities, and the government of Upper Canada was no more sensitive to them than were the governments of the other colonies, and that of Great Britain. Certain general evils resulted, however, from this type of government, not only in Upper Canada, but in most of the colonies, and these deserve notice. The machinery of government was too heavy for the sparse population. This defect is common in pioneer lands and is remedied naturally by time. The constitution, by depriving the assembly of any real responsibility or power, tended to draw into public activities men who were grievance-mongers and agitators rather than men who were statesmen and administrators. The complete separation of powers between the nominated and elected branches of the government invited friction. The constitution, with all its defects, was difficult to modify. The impossibility of legislative reform in the face of the Canadian executive threw the hope of advance entirely on acts of the imperial parliament, and statesmen in England were not sufficiently in touch with provincial affairs to devote much attention or interest to the subject. The high degree of centralization needed in 1791 had served its purpose before 1840, and should have given way to greater popular control. As, however, the constitution remained rigid, political unrest ensued. In such a state of affairs a certain degree of unrest was the natural accompaniment of growth. Had the people not agitated for reform, they would not have been worthy of the small amount of power already accorded them.



## CHAPTER III

### THE AFTERMATH OF THE WAR OF 1812

A PERIOD of economic depression followed the unwonted prosperity enjoyed by Upper Canada during the War of 1812. In war times the presence of British troops had supplied a much needed local market, the issue of army bills from Lower Canada had inflated the currency, and there was much speculation in land.<sup>1</sup> After the war not only was a local market lacking, but Great Britain, having ended her long war with France, entrenched her landed interest in severe corn laws which restricted the import of colonial corn until the price had reached sixty-seven shillings a quarter (eight bushels). With the fall in prices this proved virtually a prohibition, and in Canada there followed great distress that culminated in 1821. The circulation of money decreased, the government stores were withdrawn, and people found themselves in debt and compelled to turn from their previous pursuits to other employment. Conditions were especially bad in the Niagara district, which had been devastated by several invasions.<sup>2</sup>

This economic stagnation was reinforced by the reaction from the excitement of war, and produced political unrest. The first years after the war were, however, uneventful. The only complaint arose from the settlement of war claims. By an act of 1813 (cap. 4) the legislature had provided pensions for war widows and disabled soldiers. In 1815, 6000*l.* were voted to the militia for six months' pay after disbandment. The militia had rendered notable service during the war and, being well aware of the fact, they were not easily satisfied. In Lower Canada the *voltigeurs* had been placed on the same footing as the regular troops, the officers receiving half-pay

<sup>1</sup> Shortt, *Economic Effect of the War of 1812 on Upper Canada*.

<sup>2</sup> Howison, *Sketches of Upper Canada*, pp. 79-82; *Journals of Assembly*, March 31, 1821, Report of Select Committee on Agriculture and Imports; C.O. 42/356, Gore to Bathurst, Oct. 17.

on disbandment, and when the news of this reached Upper Canada the sensitive jealousy of the militiamen was at once aroused. After several years' protest on the subject they were at last granted the indulgence of one hundred acres of land for each, but as the grant to an ordinary settler had been two hundred acres before the war, they received their allotments with bad grace.<sup>3</sup>

A more serious set of claims distracted the province until 1837. These were made upon the government by private persons who had supplied the government with provisions, or whose property had been occupied or destroyed during the war. Early in 1813 a board had been appointed and had recorded such claims, but the records were destroyed by the capture of Niagara in May of that year.<sup>4</sup> After the peace a second board was appointed and made a report in July, 1816, substantiating claims to the amount of 230,000*l.* This award was considered unnecessarily large and, previous to the payment of any part of it, a commission of revision was appointed. An act of 1813 (cap. 9) had confiscated the estates of traitors, and it was announced soon after the peace that these estates would be applied to liquidate the claims of the war sufferers. Unfortunately the sale realized only 7200*l.* after deduction of debts and other charges had been met, and no purchasers could be found before 1820.<sup>5</sup> In 1818, therefore, the war claimants saw no prospect of payment in sight.<sup>6</sup>

A third cause of unrest after the war was the new policy pursued towards settlers from the United States. So intense was the fear of the United States among British officials in Canada that in Lower Canada Sherbrooke took steps to keep the frontier a waste.<sup>7</sup> In Upper Canada, Bathurst had sent orders to Drummond to grant no further lands to Americans, and the governor, in consequence, ordered the sheriffs to keep lists of aliens and to refuse the oath of allegiance without special permission.<sup>8</sup> This extreme step was later pronounced

<sup>3</sup> Gourlay, *Statistical Account*, vol. II, p. 608; C.O. 42/375, Maitland to Bathurst, Feb. 5, 1824; C.O. 43/41, Bathurst to Maitland, Dec. 9, 1818; C.O. 42/375, Maitland to Bathurst, Sept. 8; C.O. 42/376, *passim*.

<sup>4</sup> C.O. 42/365, Maitland to Bathurst, March 7, 1820.

<sup>5</sup> C.O. 42/361, Halton to Goulburn, Aug. 25, 1818.

<sup>6</sup> C.O. 42/414, Colborne to Goderich, April 10, 1833.

<sup>7</sup> *Canadian Archives Report*, State Papers, Lower Canada, Sherbrooke to Bathurst, Sept. 23, 1816.

<sup>8</sup> C.O. 42/359, Gore to Bathurst, April 7.



by Bathurst to be a misconstruction of his orders.<sup>9</sup> He insisted, however, that the seven years' residence imposed by an act of 30 Geo. III (cap. CXXVII) as a qualification for owning land, should no longer be ignored, as it had been previous to the war. This policy was distasteful to land speculators who counted on immigration to enhance the price of their property, and it was probably disapproved of by the great body of Upper Canadians.

In the above combination of circumstances is to be found adequate ground for unrest, and we might expect its reflection in the assembly. The session of 1816 was peaceful, the house making a permanent contribution to the civil government and a pompous but inappropriate grant of 1000*l.* for a service of plate to the lieutenant-governor, Sir Francis Gore, who had just returned to the province after five years' leave of absence, and who had done little to merit the distinction. It was not until after the election of 1816 that the discontent in the country was reflected in the legislature. On March 12 the assembly voted 10,281*l.* for the civil service, but on April 3, on the motion of a Scottish landowner of note, Robert Nichol, who was a quartermaster-general of the aggrieved militia and a war claimant, the house went into committee on the state of the province. There ensued a debate in which the government was censured for excluding Americans, for allotting lands to the Protestant clergy, for the policy of crown reserves, and for maladministration of the post office department. By a majority of 13 to 7 Nichol proceeded on Saturday, April 5, to carry two resolutions to the effect that imperial acts, such as 30 Geo. III, cap. XXVII, authorized people from the United States to settle and to hold lands in Upper Canada, and that the prohibition to administer the oath of allegiance was illegal. Other resolutions of censure were on the order of the day for the following Monday, when Gore, foreseeing that they would be carried and would then be disseminated throughout the province, prorogued the house.<sup>10</sup>

The same assembly opened its second session on February 5, 1818, in no humble mood. On March 5, a bill was introduced, though not pressed, for the purpose of repealing the supply

<sup>9</sup> C.O. 43/41, Bathurst to Smith, Nov. 30, 1817.

<sup>10</sup> *Journals of Assembly*; C.O. 42/359, Gore to Bathurst, April 7, 1817.

act of 1816. A new address on the subject of the grant of lands to militiamen was passed, and on March 14 the house, by a vote of 18 to 1, went into committee on the state of the province. The committee was resumed on March 24, and a resolution was passed that, if the legislature was henceforth to be called on to vote a supply for the excess of expenditure over the provincial revenue, a preliminary examination must first be made into the state of the province and of the executive departments. On March 28 a select committee reported that the 2500*l.* voted in 1816 had been misappropriated for pensions unauthorized by the legislature, and that 300*l.* had been granted to increase the salary of the speaker of the legislative council, though a bill for that purpose had been lost in 1816. The committee recommended that the act be revised or repealed and that the whole of the civil expenditure be annually submitted for the approval of the legislature.<sup>11</sup>

The remainder of the session was exhausted in an acrimonious dispute with the legislative council over a point of privilege. On March 17, the council returned to the assembly a bill for regulating trade with the United States which it had amended fundamentally. In previous sessions the council had often amended money bills, and the assembly had either passed them with the saving clause that the amendments did not relate to the money clauses, or had introduced a new bill including the amendments. This time, however, the assembly was in no mood for compromise. It sent up to the council a series of resolutions denying any right to the council to amend money bills. The council returned counter-resolutions that the assembly did not possess the privileges of the House of Commons, and asserted that the legislative council and the assembly of Upper Canada "were co-ordinate branches of a limited legislature" constituted by the act of 1791. The assembly replied with the claim that the only restrictions to its power were in connection with a few matters of imperial concern, such as crown lands, and that otherwise it possessed "the British constitution in all the plenitude of its power and privileges."<sup>12</sup>

For several days the quarrel continued without result. The

<sup>11</sup> *Journals.*

<sup>12</sup> *Ibid.*



council was technically correct. In 1815 there had been a dispute in Lower Canada over the jurisdiction of the two houses, and the opinion of the law officers of the crown had been taken. They had laid down that the assembly was not entitled to all the privileges of the law which regulated the procedure of parliament, for to grant such would be "to give to subordinate bodies the mighty power of supremacy." The assembly possessed only such privileges as were "directly and indispensably necessary to enable it to perform the functions incidental to the constitution." An enumeration followed which did not include control over money bills.<sup>13</sup> This, however, was one of those cases where the technical law was insufficient for the establishment of popular privileges.

Unfortunately the assembly was as willing to stretch its prerogatives as was the council. The session had dragged out to its normal length, without accomplishing any business, and on March 27, the assembly, instead of passing the annual supply bill, voted the requisite money by address, thus precluding joint action with the upper house. Samuel Smith, the senior councillor, who had taken over the government in the absence of Gore, protested that this action was without precedent, but he failed to get his supply bill. The assembly voted a long address to the prince regent, justifying its action throughout the whole quarrel, and attributing the blame for everything to the fact that the council was overridden by office-holders. It then took pains to prevent the formation of a quorum until it was formally prorogued.<sup>14</sup>

The soil was well prepared for the demagogue who was now transplanted to Upper Canada. This is not the place for a detailed study of that most remarkable character, Robert Gourlay, an interesting subject for those interested in abnormal psychology. He was born in 1778 in Fifeshire, in Scotland, and educated at St. Andrews and the University of Edinburgh, specializing in agriculture and chemistry. In 1800 and 1801 he made an extensive tour through England and Wales, and, through the influence of Arthur Young, he was employed by the Board of Agriculture to make a report of his observations.

<sup>13</sup> Doughty and McArthur, *Constitutional Documents*, p. 470.

<sup>14</sup> All the papers concerning the quarrel are inclosed in C.O. 42/361, Smith to Bathurst, April 6.

Afterwards he returned to his father's farm in Fifeshire, and in 1807 he married a certain Jean Henderson, who was connected by marriage with Robert Hamilton of Queenston, Upper Canada, and with William Dickson and Thomas Clark, legislative councillors of the province. Mrs. Gourlay owned four hundred acres of land in Upper Canada, and in 1810 Gourlay bought another four hundred acres adjoining his wife's property. Up to this point Gourlay's history, as narrated by himself, presents nothing unusual, but even thus early there were in his temperament neurotic traces, which in after life took the form of fits of insanity. In 1808 he fell out with the Earl of Kellie and left Scotland. He then leased the Deptford farm of the Duke of Somerset in Wiltshire, and was soon engaged in a law-suit over his tenure. He seems always to have been a passionate, though unreasoning philanthropist, and as early as 1815 he began his plague of petitions to parliament against the tyranny of the poor laws.<sup>15</sup>

His Canadian relations in the course of their trips to England probably gave him the idea of emigrating. Early in 1817 he sailed for Montreal with two ends in view. Disinherited by his father, and without hope of property at home, he thought of establishing himself in the colony. He also wished to gain information about the suitability of Canada as an asylum for the English poor. On his voyage he conceived the idea of drawing up a series of questions to submit to the people of Canada for the purpose of acquiring information for emigrants. He arrived in Upper Canada in June, 1817, and consulted Captain Fowler at Perth about the possibility of securing a large grant of land. He was told that he could receive only one hundred acres, which did not suit his purpose. He then proceeded to Kingston and then to Queenston, where he was confined to his bed for two months with a nervous illness which attacked him periodically. Having obtained no financial aid from his kinsman, Thomas Clark, he crossed to Buffalo for a visit of three weeks. In October he went to York and interviewed the administration about a grant of land, and petitioned the governor of Lower Canada to the same end.<sup>16</sup> While awaiting the outcome, on October 30, 1817, he published in

<sup>15</sup> Riddell, *Robert Fleming Gourlay*, chap. I.

<sup>16</sup> *Ibid*, chap. II.



the *Upper Canadian Gazette*, the official organ of the government, his first address to the resident landowners.<sup>17</sup> Seven hundred copies of the address were also published in pamphlet form and distributed among the officers of the various counties.

The address was non-political. "My present address waives all regard for political arrangements ; it has in view, simply to open a correspondence between you and your fellow-subjects at home, where the utmost ignorance prevails with respect to the natural resources of this fine country. . . . No authentic account has yet been afforded to men of capital, to men of enterprise and skill, of those important facts which are essential to be known before such men will launch into foreign speculation, or venture their families in quest of better fortunes across the Atlantic. In this state of ignorance you have hitherto had for settlers chiefly poor men driven from home by despair. These men, ill-informed and lost in the novelties which surround them, make at first but a feeble commencement, and ultimately form a society, crude, unambitious, lame ; it has attractions to stimulate desire and place its colonization above the aids of necessity. . . . Some have thought the exclusion of American citizens a great bar to the speedy settlement of Canada, but a liberal system of colonization from Europe would render this of small importance."

The remainder of the address pointed out the need of capital, which could be secured only by advertising the country, and also the strength which would result to the imperial tie if Canada were powerful and rich instead of weak and poor. To promote such advertisement Gourlay desired to collect information for a statistical account of Upper Canada. He wished it to be a work of real authority, and he invited replies to a list of thirty-one questions appended.<sup>18</sup> The questions related to the population, wages, resources, number of schools, churches, shops and taverns, etc. The last question asked was, "What, in your opinion, retards the improvement of your township in particular, or the province in general, and what would most contribute to the same ?"

This address, revealing Gourlay at his best, gained general

<sup>17</sup> Gourlay, *Statistical Account*, Introduction, clxxxvi.

<sup>18</sup> *Statistical Account*, vol. I, p. 270.

support. Even in governmental circles the only opposer was John Strachan, the most imperious and obdurate tory who has left his stamp on Canadian history.<sup>19</sup> Reports came in from most of the townships, signed commonly by local men of influence. Nor were any scruples felt concerning the expediency of answering question 31. The common complaints were lack of population and capital, the large amount of land held by non-residents, the clergy and crown reserves, an improper system of emigration from Great Britain, bad roads, and the exclusion of settlers coming from the United States.<sup>20</sup>

Gourlay next proceeded on a tour of the western part of the province. Here he formed a high opinion of the settlers of American birth, and was won over by them to the opinion that the exclusion of Americans was subversive of the constitution.<sup>21</sup> In November, Gourlay's brother Thomas arrived in Upper Canada, where he followed Robert's example and applied for a grant of land, but at the end of two months he left the province for Demarara.<sup>22</sup> Gourlay desired not an ordinary grant, but a large tract such as had been granted to Thomas Talbot for the promotion of his schemes of colonization.<sup>23</sup> He attributed to Strachan the failure of his own and his brother's application, but this was just at the time when new regulations were issued imposing fees on all grants above fifty acres, and it may well have been that Gourlay and his brother were not prepared to pay these. Throughout his life he cherished inflammatory resentment against one person after another, whom he fancied had served him ill. In his morbid way he now brooded over the defeat of his hopes, until his indignation was passionate. We have his own confession that it was his personal disappointment which caused, early in January, his remarkable change of tactics.<sup>24</sup> In two instalments of February 5 and 12, 1818, he published his second address to the resident landowners. In this he

<sup>19</sup> *Ibid.*, vol. II, append. III. Strachan, *A Visit to the Province of Upper Canada*, pp. 184-196. For life of Strachan see Bethune, *Memoirs of the Rt. Rev. and Hon. Bishop, John Strachan*.

<sup>20</sup> *Statistical Account*, vol. I, contains the reports.

<sup>21</sup> *Ibid.*, vol. II, p. 422.

<sup>22</sup> *Statistical Account*, vol. II, pp. 419-20.

<sup>23</sup> C.O. 42/180, Torrens to Goulburn, March 25, and enclosure.

<sup>24</sup> *Statistical Account*, vol. II, pp. 565-69.



stated that he had changed his mind and must change his course of procedure.

“ This country, I am convinced, cannot be saved from ruin by temporizing measures, nor by the efforts and reasoning of any individual. If it is to be saved, your parliament now assembled must be held up to its duty by the strength and spirit of its constituents ; a new leaf must be turned over in public conduct, and the people of Upper Canada must assume a character without which all parliaments naturally dwindle into contempt ; and become the mere tools, if not the sport of the executive power.” There follows an adverse comment on the dismissal of the assembly in 1817, and an exhortation to the house to institute an inquiry. The remainder of the address, inspired and approved, as Gourlay later asserted, by the councillors, Dickson and Clark, assailed the government for the exclusion of Americans.<sup>25</sup>

Shortly after this publication Gourlay addressed an abusive letter to Smith, the acting governor, relating to the evasion of his petition for land. He has recorded that by this time he was anxious to return to England and had just received a letter from his wife imploring him to do so. “ In a tumult of feeling, in a paroxysm, I sat down to finish my letter to the president. I thought of my wife’s anxiety, I thought of hundreds of emigrants who had been vexed or disappointed, and torn to pieces by the vile, loathsome and lazy vermin of Little York. I attacked the whole swarm and flung into my letter an extract from that of my beloved and distressed wife. The bolt was discharged and kindled inextinguishable flames. Little York ! Little York on fire !!! Dickson and Clark, misjudging the warmest impulses of a convulsed heart, deserted my cause in the capital, and went sneaking, forsooth, to the president, to make an apology ; to the president, whose speech was so matted with meanness and mischief. Clark wrote to me to get out of the province by a by-path. . . . I was attacked, I had to defend, and a controversy of two months ensued. My constant aim was to inquire into the state of the province. . . . Though I offered to appear at the bar of parliament, and sent up petitions for presentation to parliament, nobody would ‘ father ’ these. The conscript

<sup>25</sup> *Ibid.*, vol. II, pp. 471-83.

fathers had not the courage, but a motion was at last made for inquiry in the commons house of assembly. A committee was appointed to send for and examine papers and persons ; but alas ! all hope was over. The feud above spoken of broke out between the assembly and the legislative council and nothing more could be done.”<sup>26</sup>

Henceforth all Gourlay’s actions and publications were conducted in the frenzied style of this narrative. He reprinted all his previous publications in a book of one hundred and sixty seven pages. Clark again advised him to leave the province. Gourlay replied in an indignant article reviling both Clark and Strachan. Similar letters appeared almost weekly in the *Niagara Spectator*.<sup>27</sup>

The most telling attack on the government was still to come. After the prorogation of parliament on April 2, Gourlay published his third address to the resident landowners in the following strain. “Gentlemen, the constitution of this province is in danger, and all the blessings of the social compact are running to waste. For three years the laws have been thwarted and set aside by the executive power ; for three sessions have your legislators sat in assembly and given sanction to the monstrous, the hideous abuse. A worthy catastrophe has closed this phase of government ; your commons and your peers have quarrelled and, the latter would assert, the constitutional charter of Canada may be trifled with. What is to be done ? Do you expect anything from a new set of representatives ? here again you will be deceived. . . . It is not the men, it is the system which blasts every hope of good, and till the system is overturned, it is vain to expect anything of value from change of representatives or governors.

“My present purpose is not to dwell on theory ; but to recommend and set example in the practice of using this glorious privilege. As individuals we have the right to petition the prince or parliament of Great Britain ; and we have a right to meet for this purpose in collective bodies. My proposal now is, that a meeting be henceforth held in each organized township of the province. I shall take upon me to name the day for the meeting of this township of Niagara and say that

<sup>26</sup> *Ibid.*, p. 566.

<sup>27</sup> Riddell, *Robert Fleming Gourlay*, p. 21.



on Monday next, the 13 inst., I shall be ready by twelve o'clock noon, at Mr. James Rogers' coffee house, to proceed to business with whoever is inclined to meet me. The people of each township should, I conceive, at a meeting, choose a representative and a clerk. The representatives should assemble from the several townships within each district, on an appointed day, to draw up a petition to the prince regent ; and which could, soon after, be got signed by every well-wisher to the cause.

"The district meetings should, without delay, hold conference by representatives, each respectively choosing one, to meet in a provincial convention, who should arrange the whole business, despatch commissioners to England with the petitions, and hold correspondence with them, as well as with the supreme government." Gourlay himself declined to act as commissioner. "As soon as matters come to a head, all information collected by me shall be at the disposal of the commissioners, and even better consequences may be expected from this popular movement, than any that could have followed from the parliamentary inquiry, had that been allowed to proceed. It will show, that though the rights of parliament may be trifled with, those of the people of Upper Canada are not so easily to be set at defiance."<sup>28</sup>

To this strange call the people of Upper Canada responded as though bewitched by Gourlay's rhetoric.<sup>29</sup> On the appointed day a meeting was held at Niagara and a member of the assembly, David Secord, was called to the chair. A number of respectable men were elected as representatives to the district meeting. On April 18 Thomas Clark published a handbill proclaiming the meeting illegal, but this had small effect in stopping the meetings in the Niagara district, where discontent was most acute. On May 4 the district meeting of fifteen delegates was held, representatives were elected, and a petition was drafted to the prince regent. This petition, several thousand copies of which were scattered about the province,<sup>30</sup> was wholly devoted to complaints that the services of the provincial militia had not received adequate recognition,

<sup>28</sup> *Statistical Account*, vol. II, p. 581.

<sup>29</sup> *Transactions of the Upper Canadian Friends of Inquiry*, August, 1818 ; Riddell, *op. cit.*, p. 25.

<sup>30</sup> *Statistical Account*, vol. I, p. 571.

that the war claims had not been paid, and that the land system was mismanaged.<sup>31</sup> In it Gourlay's exaggerated style reached its climax. "Corruption, indeed, has reached such a height in this province that it is thought that no other part of the British empire witnesses the like. . . . Under this system of international management and weakened from other evil influences, Upper Canada now pines in comparative decay ; discontent and poverty are experienced in a land supremely blessed with gifts of nature ; dread of arbitrary power wars here against free exercise of reason and manly sentiment ; laws have been set aside ; legislators have come into derision and contempt for the mother country seems fast gathering strength to dis-unite the people of Canada from their friends at home."

Gourlay next proceeded on a tour through the districts to organize town meetings. In the Gore and Midland districts he was very successful and the full quota of representatives was returned. But Talbot prevented much agitation in the London district, and the Home district stood completely aloof, probably owing to the prestige exercised by the capital. Strachan's influence in the Eastern district was sufficient to raise much local opposition, and Gourlay's publications were burned in a public bonfire at Cornwall. The back townships of emigrants were not involved.<sup>32</sup>

Gourlay's success was, however, sufficient to alarm the government.<sup>33</sup> On April 18, the administration had directed the attorney-general to seize the first opportunity to prosecute him. On June 11 he was arrested at Kingston on a charge of criminal libel. He gave bail and proceeded on his way. On June 26 he was arrested at Johnstown and again bailed out. On July 6 he was in York attending the provincial convention of the "friends of enquiry," which opened in July with fourteen district representatives in attendance. Gourlay now proposed to alter the plan of procedure. Instead of sending delegates to England, he drew up two petitions, one to the prince regent, the other to Maitland, the new governor, urging a

<sup>31</sup> *Ibid.*, p. 576. For this publication Gourlay was later tried for seditious libel.

<sup>32</sup> Riddell, *op. cit.*, pp. 27-28.

<sup>33</sup> C.O. 42/361, Smith to Bathurst, April 18.



dissolution of the assembly. This change of programme was doubtless dictated by a shortage of money. Maitland refused to receive either petition, and the convention adjourned until February, 1819, when the legislature was expected to meet. Branch conventions sat at Kingston and Ancaster. On August 14 Gourlay was tried at Kingston. He conducted his own defence, was acquitted and was given a complimentary dinner. A similar result attended his trial at Brockville on September 1. The governor was of the opinion that no jury would convict him.<sup>34</sup>

Gourlay left the province for a visit to Lower Canada and New York, but by October 17 he was back in Kingston. On October 12, Sir Peregrine Maitland opened a special session of the legislature with a speech in which he urged the expediency of a law against unauthorized conventions of delegates.<sup>35</sup> The assembly debated for four days, but finally passed a resolution that no member of the convention should be allowed a seat in the house. Further resolutions pronounced the assembly the only constituted representative of the people and the recent convention of delegates illegal. On October 31 a bill in conformity with these resolutions passed both houses.<sup>36</sup> Gourlay greeted the act by a scurrilous article with the melodramatic headline, "Gagged, gagged, by Jingo!" and against considerable opposition he managed to organize several meetings of protest.<sup>37</sup>

The executive now played its trump card. An act had been passed in 1804 "for the better securing the province against all seditious attempts or designs to disturb the tranquillity thereof."<sup>38</sup> It authorized the governor, the members of the legislative or executive councils, and the judges of the king's bench, or their deputies, to arrest any person not having been an inhabitant of the province for the space of six months preceding the warrant, and not having taken the oath of allegiance, who by word or action had given ground for the suspicion that he was endeavouring to alienate the minds of the people from the government, or in any way to disturb the

<sup>34</sup> *Transactions of the Upper Canadian Convention of Friends of Enquiry.*

<sup>35</sup> C.O. 42/361, Maitland to Bathurst, Oct. 19; Journals.

<sup>36</sup> But see C.O. 42/362, Maitland to Goulburn, July 22.

<sup>37</sup> Riddell, *op. cit.*, p. 36.

<sup>38</sup> Cap. 1.

public tranquillity, and to order such a person to leave the province. It further provided "that upon any such person being found at large within the province, without licence to return, granted by the government, he should be committed, without bail, until released by the government, or be delivered by the court of oyer and terminer, in due course of the law, and that he should be liable to imprisonment and banishment ; if he should again return without licence, he should be liable to suffer death as a felon."

This act had been passed in 1804 on the recommendation of Lieutenant-Governor Hunter. It had probably been inspired by fear of United Irishmen who were swarming to the United States at that time. So far as we know it had been applied only twice, in both cases against Americans during the war.<sup>39</sup> It was now invoked against Gourlay. On December 21, 1818, he was arrested and brought before two councillors, Dickson and Claus, and other magistrates. He was asked whether he knew Cobbett and Hunt ; whether he had been at Spa Fields ; whether he had ever been in Ireland or in the United States ; whether he had written " Gagged, gagged, by jingo ! " To all these questions he answered " yes," although he appears to have been innocent of the implication contained in them that he was a conspirator against the British government.<sup>40</sup> He took the stand that he had been an inhabitant for eighteen months and had taken the oath of allegiance in England, and so was not amenable to the act. But in fact he had not been a settled resident, and had just returned from a trip to the United States, and had not taken the oath of allegiance in Canada. On January 1, 1819, he received a formal order to leave the province within ten days, but he refused and was confined in Niagara jail. He petitioned for a writ of *habeas corpus*, but was remitted to jail on being brought before the chief justice. There he remained until August 20.<sup>41</sup> He employed his time in penning virulent attacks against those who had incurred his enmity. Through the connivance of the sheriff, he succeeded in publishing these attacks in the *Niagara Spectator*. Their unusual violence is excused by the

<sup>39</sup> C.O. 42/395, Peel to Bathurst, July 18, and enclosure.

<sup>40</sup> *Statistical Account*, Introduction, ccxi-ccxvii.

<sup>41</sup> Riddell, *op. cit.*, chap. IV.



state of Gourlay's health, which gave way entirely during the long confinement through a stifling summer. On August 20, 1819, he was brought before the chief justice for trial. His mind was too deranged to conduct his defence, but this mattered little, as the sole question was whether he had disobeyed a legal order to quit the province.<sup>42</sup> On conviction, bewildered and distracted, as he pathetically related, he made his way back to Scotland.

Gourlay always contended that his treatment in Canada was arbitrary and illegal, but in reality every step taken was in strict accordance with the act of 1804.<sup>43</sup> According to modern ideas this act and that of 1818 against public meetings seem tyrannical and subversive of public liberty, but they were not worse than the Six Acts and other repressive measures of the same period in England. Indeed an interesting parallel can be drawn between England and her remote colony after the peace. Both experienced commercial depression which resulted in political unrest. Gourlay's methods of protest were those of Cobbett and Hunt, with whom he was personally acquainted, and Maitland's methods of repression were those of the English tories with whom he was connected.

How great was the support accorded Gourlay? There can be no doubt that even after his second address, a large number of respectable settlers supported him in his organization of meetings for enquiry. Many magistrates and several members of the legislature took part in these meetings. The only two newspapers in the province that were widely read, the *Niagara Spectator* and the *Kingston Gazette*, were faithful exponents of his policy.<sup>44</sup> A brother of Thomas Talbot, who was visiting Upper Canada at this time, recorded that every mouth was filled with Gourlay's praises; that he was idolized by the Canadians as Bonaparte was by the French.<sup>45</sup> His chief supporters were found among the American loyalists in the Niagara and the Midland districts. The Scottish settlers of the Eastern District and the later American immigrants were

<sup>42</sup> C.O. 42/369, Peel to Bathurst, July 18.

<sup>43</sup> For a full discussion of the subject see Riddell, *op. cit.*, chap. IV; *The Neptunian*, Nos. 6 and 8.

<sup>44</sup> C.O. 42/362, Maitland to Goulburn, July 22; Strachan, *op. cit.*, pp. 191-93.

<sup>45</sup> *Five Years' Residence*, vol. I, pp. 416-19.

relatively unresponsive. Gourlay's agitation at no time took the form of an attack on the imperial connection. No one, except a few members of the executive, accused him of disloyalty, and everything in his later career tends to prove his attachment to the empire. A strain of intense intemperance runs, however, through all his actions, and it cannot be said that the means he employed were in any way calculated to gain redress of the popular grievances that he attacked. With a passion for collecting and recording, he has left an enormous amount of printed material embodying collections of his newspaper articles, pamphlets, etc., and a laborious perusal of the confused mass of these writings gives one the impression of a muddled brain. Nor is our opinion of him raised by the fact that the mainspring of his resentment against the government was his own thwarted ambition to establish himself as a land agent. The scurrility of Gourlay's personalities exceeded that of any later agitator in Upper Canada, and excuse can only be found for him by remembering that he was never properly balanced and that throughout his life he suffered from a nervous derangement that at length affected his sanity.

Upper Canada soon reacted from the political hysteria which it had imbibed from Gourlay. The legislature deserted him by its act against public meetings, and while he was in prison many petitions were sent to the lieutenant-governor disavowing any participation in his opinions. By a little judicious management the affair might have been converted into a moral victory for the executive, but the only remedy applied was repression. The sheriffs who had supported Gourlay were dismissed from office,<sup>46</sup> and grants of land were withheld from those militiamen who had participated in the conventions.<sup>47</sup> The editor of the *Niagara Spectator* was tried for libel, because he had published Gourlay's addresses. He was fined fifty pounds and was committed to eighteen months' imprisonment.<sup>48</sup> The act to prevent public meetings had served its purpose and was repealed in 1820, but the tyrannical sedition act of 1804 was retained on the statute book until 1829 by the refusal of the legislative council to accept its repeal. Gourlay's severe

<sup>46</sup> C.O. 43/362, Maitland to Bathurst, June 26.

<sup>47</sup> C.O. 42/365, Maitland to Bathurst, March 4.

<sup>48</sup> *Journals of Assembly*, March 6, 1820; *Banished Briton and Neptunian*, no. 7.



treatment won for him many sympathizers, who embellished his story year by year, until he became known in Canadian history as the first martyr to the cause of reform. From 1818 dates the existence of a permanent opposition to the government in the provincial assembly.<sup>49</sup> No effort was made to remedy the real grievances which had given the agitator his soil for work, and so long as they remained new agitators were bound to arise. Accounts of Gourlay's persecution were spread through the United States by the press, and they were used everywhere to illustrate the popular American doctrines of British tyranny.<sup>50</sup>

A word may be added here concerning the subsequent history of the claims for losses in the War of 1812-14. The committee for revision of awards reduced them to 182,130*l.*,<sup>51</sup> but the question next arose who should advance this large sum of money. The colonists claimed that the war had come upon them through no fault of their own, but because of their connection with Great Britain. They had borne its brunt and they argued that the whole of their war claims should be paid by the British government. Impatient at the delay of settlement, the sufferers appointed a committee to urge their claims, and this committee engaged Edward Ellice, Alexander Gillespie and John Galt to forward their interests at the Colonial Office.<sup>52</sup> Galt attacked the question with the zeal characteristic of that remarkable man. After much negotiation over an abortive scheme for a loan to Upper Canada, the Treasury agreed to advance 57,412*l.* at a rate of about 5*s.* to the pound on the second award, on condition that the province should advance an equal sum.<sup>53</sup> If the total did not satisfy all claims, England would contribute, in addition, half of the remaining sum required. Galt then bestirred himself to find a way to meet Canada's portion of the claims, and his attention was attracted to the crown reserves. He proposed a plan for the sale of these reserves to a colonizing company, the proceeds to be utilized for the payment of the war claims. The Colonial Office

<sup>49</sup> Bethune, *Memoirs of Bishop Strachan*, p. 67.

<sup>50</sup> *Neptunian*, no. 12, gives several extracts from American papers concerning Gourlay.

<sup>51</sup> C.O. 42/414, Colborne to Goderich, April 10.

<sup>52</sup> C.O. 42/367, Commissioners to Bathurst, Dec. 1.

<sup>53</sup> C.O. 42/374, Horton to ? (Draft).

accepted the plan, and the Canada Company was the ultimate result, but the money accruing to the Canadian treasury from the payments of the Canada Company, instead of being utilized for war losses, was applied to relieve the British Treasury of its contributions to the Canadian civil service. Throughout life Galt cherished a grudge against the Colonial Office for this perversion of his plan, which, he urged, was a breach of faith that placed him in a false light before the people of Upper Canada.<sup>54</sup>

The next step in compensation rested, therefore, with the government of the province. It assumed the burden only with the greatest reluctance, and it was not until 1831 that a satisfactory act was passed appropriating certain duties to meet the war claims. When the proceeds of the forfeited estates had been utilized, there was still 57,910*l.* to be paid, of which the British Treasury was pledged to advance half.<sup>55</sup> A new set of negotiations ensued. The British government declined to adhere to its former agreement, and it was not until 1837 that the claims were finally settled, 20,000*l.* being paid out of the casual and territorial revenue of the province, 20,000*l.* by the legislature, and 17,910*l.* by the imperial parliament.<sup>56</sup>

<sup>54</sup> C.O. 42/442, Galt to Glenelg, Jan. 28, and enclosures. See also *Gordon*, John Galt, pp. 48-58.

<sup>55</sup> C.O. 42/414, Colborne to Goderich, April 10.

<sup>56</sup> *Journals of Assembly*, 1835, Jan. 26; C.O. 43/45, Glenelg to Head, Jan. 5, 1837.



## CHAPTER IV

### COMMERCIAL STRIFE WITH LOWER CANADA

THE division of Canada into two provinces in 1791 was designed to create harmony by separating the British settlers above Montreal from the French settlers below, but it resulted in incessant friction, which reached its climax shortly after the departure of Robert Gurlay from Upper Canada.

The trouble was commercial rather than racial. In the absence of direct taxation in either province, the duties levied on imports at Quebec formed a principal source of revenue to meet the expense of civil government and the administration of justice. The first act creating such a revenue was passed by the imperial parliament in 1774 and became known as the Quebec Revenue Act (14 Geo. III, cap LXXXVIII). On the division of the provinces it was foreseen that trouble might arise if Lower Canada were accorded complete control over import duties, and to forestall this, clause 46 of the Constitutional Act reserved to the British parliament the right of imposing duties to regulate commerce between the provinces. After 1791 the Quebec Revenue Act continued in force, but none of its proceeds was applied to the government of Upper Canada, the civil list of which was then voted by the imperial parliament.

In 1793 Lower Canada passed a local act imposing a duty on imported wines for the purpose of meeting the contingent expenses of the legislature. At the same time the assembly passed resolutions recognizing the right of Upper Canada to a drawback on this duty. But in the same year the Upper Canadian legislature also passed an act levying a duty on wine, to meet its own contingencies. Commissioners were appointed to determine the respective amounts of this doubly imposed duty to be allotted to each province. Upper Canada was granted one-eighth of the duties and in return undertook

to impose no tax on imports up the St. Lawrence. When this arrangement expired in 1797, a new plan was agreed to, by which an inspector was to be placed at Coteau du Lac to examine all boats and carriages entering Upper Canada, and to keep an exact account of the amount of dutiable goods passing into the province. Lower Canada was to furnish to the governor of Upper Canada and to the inspector at Coteau du Lac an annual account of all the duties which she had imposed, and these were to be levied according to the inspector's percentages of imports. This agreement expired in 1801, but it was renewed from time to time until 1817.<sup>1</sup>

By 1817 the defects of the system had become apparent. A considerable amount of the goods imported from Lower Canada had escaped the inspector, especially during the confusion of the war. In particular no record had been kept of supplies purchased by the commissariat in Lower Canada and sent to Upper Canada for the army and navy. But the chief complaint of Upper Canada was that the acts passed by the legislature of Lower Canada were not reported promptly, either to the governor of Upper Canada or to the inspector at Coteau du Lac, who, in consequence, made no entry of goods really dutiable until several months after the duties should have accrued.<sup>2</sup> In each session from 1814 to 1816 the assembly of Upper Canada addressed the governor on the subject. Regardless of the purchases of the commissariat, which could not be ascertained, the claims of the province for arrears amounted to 10,846*l*.<sup>3</sup> In 1817 this amount was brought forward by the Upper Canadian commissioners, who also claimed that Upper Canada, having now assumed the payment of part of her civil list, was entitled to a share in the crown duties levied by the imperial parliament. The agreement of 1817 was fairly satisfactory. The method of computation previously adopted was pronounced a failure, and by the new agreement Upper Canada was to receive one-fifth of all the duties collected at Quebec under acts of the parliament of Lower Canada passed before July 1, 1819. This was to include also one-fifth of the duties levied by the imperial act of 1774,

<sup>1</sup> C.O. 42/366, Maitland to Bathurst, August 20, 1821, and enclosures.

<sup>2</sup> C.O. 42/357, Gore to Bathurst, April 11, and enclosures.

<sup>3</sup> C.O. 42/366, Maitland to Bathurst, Aug. 20, and enclosures.



but no account was taken of Upper Canada's claims for arrears. The agreement expired in 1819, and in that year the legislature of Lower Canada, absorbed in internal quarrels, neglected to make any provision for the appointment of arbitrators. In fact, no commissioners were authorized by Lower Canada until 1821, so that for two years Upper Canada was in dire straits because of the curtailment of her revenue.<sup>4</sup>

When the commissioners finally met they found themselves in hopeless disagreement. The Upper Canadians revived all their claims for arrears in addition to the revenue withheld since 1819. The Lower Canadians claimed that they had no authority whatever to consider arrears from former agreements, the settlement of 1817 having been final. They went to the extreme of refusing to award one-fifth of the revenue from 1819 to 1821 to Upper Canada on the ground that imports to Upper Canada had decreased since the war. Far from expressing any compunction for their negligence, they asserted that it was an "unavoidable consequence of a dependence for revenue on the legislature of another colony, to which the legislature of Upper Canada has long consented." Their only proposal was that the commissioners should inspect the books of merchants trading in Upper Canada, with a view to obtaining an estimate of the actual amount of their imports since 1819. The Lower Canadian commissioners refused to accept for the future a division on the basis of population on the ground that the population of neither province could be accurately ascertained, and that, even if it were known, consumption of imports was not in accordance with it. They claimed that Upper Canada smuggled most of her goods from the United States instead of importing them *via* the St. Lawrence, and that she manufactured her own liquor and salt, which were important dutiable articles. They claimed also that Lower Canada carried on an extensive trade with the United States in dutiable articles, to the proceeds of which Upper Canada had no title whatever. The only plan to which they would consent was that both provinces should establish separate customs houses and levy their own duties, each province allowing goods for the other to be bonded and to pass free of duty.<sup>5</sup>

<sup>4</sup> *Ibid.*    <sup>5</sup> C.O. 42/366, Maitland to Bathurst, August 20, and enclosures.

The Upper Canadian commissioners dissented entirely from this view.<sup>6</sup> They were resentful at the neglect accorded their arrears; they pronounced the Lower Canadian scheme for investigating imports since 1819 impracticable; they claimed that their own imports had decreased no more than those of Lower Canada; they cited figures obtained from the inspector at Coteau du Lac to prove that in spite of the home production of salt and whisky Upper Canada imported one-fifth as much salt and rum as Lower Canada. On the other hand they asserted that the standard of living was higher in Upper Canada, and that the people imported more dry-goods, tea, etc., per head of population than did those of Lower Canada. They also claimed that the population of Upper Canada increased more rapidly than that of Lower Canada. The scheme of separate customs houses they rejected as expensive to establish and ineffectual in practice, because it would lead to smuggling whenever the customs rates differed in the two provinces. The commissioners finally parted without having reached any agreement whatever.

The legislature of Upper Canada, now in desperation, claimed that Quebec was an imperial rather than a provincial port, and that the whole procedure with regard to duties had been an evasion of the Constitutional Act, which vested the power of regulating inter-provincial duties in the imperial parliament. It appealed to Great Britain to intervene in its behalf, on the plea that it was not fair for Lower Canada to be both party and judge in her own dispute.<sup>7</sup> Speaking on behalf of the province, Maitland urged that, except for the proceeds of the act of 14 Geo. III, future awards be in proportion to the population of the provinces, and should be divided in accordance with the relative expenditures for civil government. In 1822, John Beverley Robinson, attorney-general of Upper Canada, was commissioned by the legislature to proceed to England to present the case of the province at the Colonial Office.<sup>8</sup>

It so happened that at this time other causes attracted the attention of the imperial parliament to Canada. Since the

<sup>6</sup> *Ibid.*

<sup>7</sup> C.O. 42/193, Reply of Commissioners for Upper Canada, July 15, 1821.

<sup>8</sup> C.O. 42/366, Maitland to Bathurst, May 20, 1821.



war the Lower Canadian Assembly had grown yearly more recalcitrant. Every session saw fresh disputes, and among statesmen in England the conviction grew that the act of 1791 had failed in its purpose of preventing friction between the British and the French of Canada. In 1791 it had been urged that the French of Lower Canada would gradually become anglicized, but by 1822 it was clear that they were clinging with increased tenacity to their idea of "la nation canadienne." In 1821 petitions on the agricultural distress of the Canadas were numerous and led to many proposals for revising trade regulations both with the United States and with Great Britain.<sup>9</sup> In this connection the Colonial Office was brought into communication with Lower Canadian merchants residing in England, all of whom were violently anti-French, and had never been reconciled to the division of the Canadas in 1791.

To these causes may be attributed the unpopular bill of 1822 for the reunion of Upper and Lower Canada. Before his death in 1819 the Duke of Richmond had advanced such a scheme for the purpose of solving the revenue disputes between the two provinces,<sup>10</sup> and, once suggested, the idea was readily taken up by the London merchants.<sup>11</sup>

Robinson arrived in England in May, 1822, and was at once asked, on behalf of the Upper Canadian assembly, to prepare the heads of a bill for adjusting the differences between Upper and Lower Canada. He drew up a draft which he submitted to Caldwell, receiver-general of Lower Canada, and Sir Charles Marshall, solicitor-general of the same province. Robinson found, however, that another bill was in consideration at the Colonial Office, which had for its purpose the reunion of the two provinces and which, according to Horton, permanent under-secretary for the colonies, was the work of Sir Charles Marshall. Robinson found official opinion in England strongly supporting the union; the Lower Canadian merchants had petitioned in its favour; and although he himself was uncertain of its expediency, he wrote home that the measure was expected to pass that session.<sup>12</sup>

<sup>9</sup> For example, C.O. 42/182, Richmond to Bathurst, July 14, 1819, and C.O. 42/186, Dalhousie to Bathurst, April 13.

<sup>10</sup> C.O. 42/184, John Young to Stuart Wortley, May 13, 1819.

<sup>11</sup> *Journals of Assembly*, Jan. 22, 1823, Robinson Correspondence.

<sup>12</sup> *Robinson Correspondence*. Robinson to Hillier, May 18.

At first all matters proceeded according to Robinson's predictions. On June 20, 1822, the Chancellor of the Exchequer moved that the two bills concerning Canada which were being prepared should be combined into a single bill for regulating the trade of Canada and for uniting the two provinces. This new bill was introduced immediately, and had reached the committee stage when the government, which had proceeded on the assurance that the whigs would support it,<sup>13</sup> was faced with the unexpected opposition of Sir James Mackintosh and thirteen of his colleagues, who very reasonably objected to further procedure until the opinion of the people of the two provinces was ascertained. Because of this opposition the ministry thought it expedient to re-divide the Canada bill into two parts. That relating to the government of the Canadas was read twice and amended in committee of the whole house on July 31, was then ordered to be printed and to be read that day three months. The second bill regulating the trade of Upper and Lower Canada was passed and appeared on the statute book as the act 3 Geo. IV, cap. CXIX.

News of this procedure did not reach the Canadas until the winter months of 1823, when printed copies of the union bill were circulated in both the provinces with the information that the bill was only awaiting the opinion of the people of the Canadas before it should pass into law. Considerable commotion was at once aroused in both the provinces, for an understanding of which it is necessary to consider the provisions of the bill.

The bill<sup>14</sup> provided that the two legislatures of Upper and Lower Canada should be amalgamated to form a united legislature for the two provinces. The sitting councillors were to form one council and the governor of the united province was to possess the power of summoning new members. The sitting members of the two assemblies were to form one assembly until a new election. The governor was to have the power of forming new counties for the eastern townships of Lower Canada, and of conferring on these counties the right of electing members to the assembly. In Upper Canada the

<sup>13</sup> *Annual Register*, 1822, Chronicle, pp. 173-74; C.O. 43/41, Bathurst to Maitland, Jan. 13, 1823. Horton, *Exposition and Defence of Lord Bathurst's Administration*; *Journals of the House of Commons*.

<sup>14</sup> Various drafts are contained in C.O. 42/193.



act of 1820 regulating representation to the assembly was to continue in force, but only until the number of representatives should reach sixty, which was to be the maximum representation for each province. No person was to be elected to the assembly who did not possess lands and tenements to the value of 500*l.* sterling. The governor was to be empowered to summon two members of the executive council to sit and debate but not to vote in the assembly. Each parliament was to sit during five years instead of the four prescribed by the Constitutional Act. The privileges of the legislature were recognized, except the power of imprisoning for contempt, which could be given only by legislative enactment. All laws of both provinces were to continue in force until repealed. All written procedure was to be in the English language only, and after the lapse of fifteen years debates in the legislature were to be confined to English. Roman Catholics were confirmed in the enjoyment of their religion, but the governor's approbation was to be necessary for the appointment of the clergy. Permissive clauses were introduced for the commutation of seignioral tenures. The revenues were to be at the disposal of the crown until the legislature had voted a permanent civil list.

A detailed consideration of this bill belongs to the history of Lower Canada, since it bristles with clauses to decrease the power and ultimately to stifle the nationality of the French Canadians. The strenuous opposition offered to its clauses by the French, and its whole-hearted acceptance by Dalhousie, governor of Lower Canada, and the English officials of the province, sufficiently bespeak its purpose. Meetings to protest against the bill were at once organized throughout the province under the leadership of Papineau, and signatures to the number of 60,642 were obtained against it.<sup>15</sup> On the other hand the British settlers of the eastern townships and the cities of Montreal and Quebec were equally strenuous in support. Except for a few British radicals under Neilson, Lower Canada was divided over the bill strictly according to race.

In Upper Canada opinion was much less decided. The officials had no objections on the score of injustice to the French Canadians; they agreed that it was desirable to

<sup>15</sup> C.O. 42/195. The whole volume is devoted to petitions.

suppress the French nationality, and they approved of the high property qualification for the assembly as a check on democracy. They realized, however, that to appoint members of the executive to sit in the assembly would result in failure. They would have preferred that the session of parliament should be extended to seven years instead of to five. On the whole it was not the purpose of the bill that they condemned, but rather its doubtful efficacy. They pointed out that Lower Canada would at first return fifty French members and probably twelve British, whereas Upper Canada would return forty British members. This would mean that the British would be outnumbered unless they were practically unanimous. Strachan was afraid that the Protestant dissenters of Upper Canada might unite with the French Canadians against the establishment of the Church of England in the Canadas. Moreover, Upper Canadians objected to moving the capital to Quebec, where attendance would be difficult and expensive. Taking all these facts into consideration the officials of Upper Canada could give but a qualified and sceptical approval to the bill.<sup>16</sup> Such men as Robinson and Strachan were induced to propose in its stead various plans for the union or confederation of all the British North American provinces, which would have all the advantages of the union without its dangers.<sup>17</sup>

The attitude of the majority of Upper Canadians was more decidedly opposed. For the time being the trade act of 1822 met their only complaints against the division of the provinces, and the union bill not only raised fear of French domination, but was regarded with repugnance because of its anti-democratic clauses. A property qualification of 500*l.* for membership would have disqualified the majority of the electorate.<sup>18</sup> The people objected to the principle of nominated members in the legislature, and asserted that the power of the governor over the civil list would deprive the assembly of its only check on the executive. Certain petitions from Upper Canada went further than this and betrayed the strong sense of local autonomy which the loyalists had inherited from the thirteen

<sup>16</sup> C.O. 42/195, *passim*; Robinson Correspondence.

<sup>17</sup> C.O. 42/194. The volume is devoted to the discussion of such schemes.

<sup>18</sup> C.O. 42/370, Maitland to Bathurst, February 22.



colonies. For example, a petition of the Niagara District complained that the mode of introducing the bill had been unconstitutional because it took from the people the constitution granted them in 1791 without their consent.

"We therefore gravely, respectfully and earnestly remonstrate to your honourable house against all innovations in this our constitution without our consent expressed by legislative act of the province passed in due session by the king, council and assembly thereof, and firstly, because this is the only legal course to effect any change in that act, except in so far as the said act, in express terms, reserves to his majesty, his heirs and successors and the parliament of Great Britain, certain powers of future legislation on permanent matters in the said act also expressed."<sup>19</sup>

The legislature was more reticent. The council asserted "its perfect reliance on the wisdom and justice of the imperial parliament," while the assembly recorded that "it did not feel called upon to express an opinion." The bill did not, indeed, create the commotion in Upper Canada which it aroused in Lower Canada, but it was so plainly unpopular in both the Canadas that it was not reintroduced into the British parliament.<sup>20</sup>

In contrast to the measure for union, the trade act of 1822 met with general satisfaction in Upper Canada. It had been ably advocated in England by Robinson, and was quite fair to the province.<sup>21</sup> The claims for arrears previous to 1819 were not recognized, but the respective share of duties since 1819 were to be apportioned by three arbitrators, one appointed by each province, the third chosen by the other two, or, in case of disagreement, by the king. Upper Canada was to receive one-fifth of all the duties until July 1, 1824. After that date arbitrators were to be appointed every four years to settle the claims. The arbitrators were also to determine the method of dividing the duties under the act of 14 Geo. III. In order to restrict somewhat the arbitrary power of Lower Canada a clause was included that no act imposing or repealing duties affecting Upper Canada was to become law until one copy had

<sup>19</sup> Inclosed in C.O. 42/370, Maitland to Bathurst, February 22. See also C.O. 42/195, *passim*.

<sup>20</sup> C.O. 43/41, Bathurst to Maitland, Jan. 13, 1823.

<sup>21</sup> 3 Geo. IV, cap. CXIX; *Robinson Correspondence*.

been transmitted to the government of that province and another had been laid before both houses of the imperial parliament. In order to remedy a complaint that boats passing through Lower Canada were subject to toll, a clause of the trade act made such tolls illegal.<sup>22</sup>

Unfortunately the best of legislative measures are inadequate to overcome geographical disabilities, and Upper Canada soon felt herself aggrieved again over her treatment. For example, the act of 1822 was silent as to any imperial duties except those of the act of 14 Geo. III, and Upper Canada was excluded from her share of the proceeds of subsequent trade acts such as 3 Geo. IV, caps. XLIV and XLV, and 5 and 6 Geo. IV, cap. CXIV.<sup>23</sup> Her claim for an apportionment of duties on the basis of the relative expense of the two civil governments was negatived, quite wisely it appears, on the ground that it would lead to a competition of expenditure between the two provinces.<sup>24</sup> By an early law of Lower Canada, retained after 1822, a double duty was imposed on all goods imported *via* Quebec by non-residents, and, to avoid this, Upper Canadian merchants were compelled to employ intermediate agents.<sup>25</sup> In accordance with the various adjustments by arbitration every four years, Upper Canada, by 1833, was in receipt of one-third of the customs revenues collected at Quebec, but this award did not avail to meet the heavy expenses which she incurred for public improvements. This was her chief grievance. The legislature of Lower Canada, being economical and unenterprising, declined to burden the people with any further acts imposing import duties, and Upper Canada found herself limited to the meagre supply furnished by acts passed prior to 1822, with the result that she was compelled to resort to heavy loans.<sup>26</sup>

This unsatisfactory economic position of Upper Canada increased ill-feeling between the provinces. To this cause can be attributed the unreasoning opposition of Upper Canada to an act of Lower Canada passed at the recommendation of

<sup>22</sup> *Robinson Correspondence*, Robinson to Hillier, Aug. 27, 1822.

<sup>23</sup> *Journals of Assembly*, append. 78, 1835; C.O. 42/426, Colborne to Aberdeen, June 22.

<sup>24</sup> C.O. 42/200, Dalhousie to Bathurst, Jan. 22.

<sup>25</sup> C.O. 42/366, Maitland to Bathurst, May 20, 1821.

<sup>26</sup> *A. & P.*, 1839, XXXIV, Nos. 1-13.



the Colonial Office in 1832 for the purpose of imposing a small head tax on immigrants to raise a fund for the sick and destitute among them. This act was vigorously attacked by the press and by the legislature of Upper Canada as sanctioning a policy which in the end would make Upper Canada a mere puppet of the lower province.<sup>27</sup>

A more substantial grievance was the reluctance of Lower Canada to undertake any serious expenditure for the improvement of the navigation of the St. Lawrence, with the result that the canals of Upper Canada were rendered relatively useless.<sup>28</sup> This was particularly galling to Upper Canada in the face of the great activity of New York State in building canals, which in a few years diverted the trade of the western states from its natural outlet *via* the St. Lawrence to an artificial one *via* the Erie Canal.<sup>29</sup>

It was such considerations as these which gave rise to a suggestion generally endorsed by the officials and men of capital that the boundary line between the two provinces be redefined to include Montreal in Upper Canada. Resolutions to this effect were introduced into the assembly frequently after 1828 but, since they were always opposed by the reformers on the ground that the annexation would be an act of injustice to the French Canadians, they failed to pass, except in the conservative assemblies of 1832 and 1836.<sup>30</sup> The only alternative solution offered was to fall back once more on the scheme of a union.<sup>31</sup>

So it was that the Act of Union of 1841 was foreshadowed long before its passage. As Upper Canada increased in population, the fear of French domination resulting from a union grew less and less, whereas the necessity for a commercial outlet for the inland province became more and more apparent. The influence of the situation upon political unrest is not so clear. In general it may be said that the moneyed classes of Upper Canada were most immediately affected, and

<sup>27</sup> C.O. 42/411, Colborne to Goderich, April 9, 1832; C.O. 42/416, Stephen to Hay, June 8; *A. & P.*, 1831-2, XXXII.

<sup>28</sup> C.O. 42/395, Crooks to Hay, July 14, 1831.

<sup>29</sup> *Journals of Assembly*, 1836-7, append. 7.

<sup>30</sup> C.O. 42/417, Mackenzie to Goderich, Jan. 18, 1833; *Journals of Assembly*, 1836-7, Nov. 30.

<sup>31</sup> Report on Civil Government, 1828, append. Evidence of Wilmot Horton.

were inclined to overlook political expediency in their zeal for commercial prosperity, whereas the poorer classes, usually too short-sighted to grasp the economic situation, opposed all change of boundaries on the score of injustice to Lower Canada, while they attributed the stagnation of Upper Canada to the maladministration of the government. The situation, therefore, intensified the bitterness of internal politics, but on the other hand it strengthened the imperial tie, for Upper Canada would have been entirely at the mercy of her French neighbour had she not been able to appeal for the intervention of the authorities in Great Britain.



## CHAPTER V

### THE ALIEN QUESTION

THE agitation over the union bill of 1822 had not subsided when a new political issue was thrust into the foreground. The new question was a legal one of a strictly technical sort, but like all other questions of the period it was dragged into politics.<sup>1</sup> The difficulty arose in connection with the legal status of settlers from the United States who had entered Canada after 1783. It is clear that the settlers of the thirteen colonies were legally British subjects until the peace, and if, before that date, they had emigrated to Canada, they naturally retained their British citizenship. But most of the settlers in Upper Canada were either loyalists who had come to Canada after the peace, or avowed supporters of the republic who had responded to the call of a new land. Since they had been denizens of the United States in 1783, did they, *ipso facto*, become American citizens?

The question was not raised previous to the War of 1812, and these immigrants had been consistently admitted to all the privileges of British subjects. An imperial act, 30 Geo. III, cap. XXVII, entitled "An act for encouraging settlers in his Majesty's colonies and plantations in America," invited persons being "subjects of the territories or countries belonging to the United States of America" to bring their household effects and settle in Canada, where they were required to take the oath of allegiance and swear that they intended to reside

<sup>1</sup> No attempt is made to deal here with the legal niceties of one of the most complicated problems of international law. The question is considered merely in its political aspects as they arose in Upper Canada. For a general discussion of the law on the subject see Halsbury, *The Laws of England*, article "Alien"; *Encyclopædia Britannica*, articles "Naturalization" and "Aliens"; Westlake, *Private International Law*, article "British Nationality." A short discussion of the question from the American point of view is contained in the *Annual Report of the American Historical Association*, 1901, vol. I, The Legislative History of Naturalization in the United States, 1776-1795, by F. G. Franklin.

permanently. In Canada such persons obtained lands by grant or purchase, and they were only to be distinguished from the United Empire Loyalists in that they and their children were not entitled to the special privileges accompanying registration on the United Empire Loyalist lists. The Constitutional Act contained a clause that no person should vote or serve in the assembly who was not "a natural born subject of his majesty, or a subject of his majesty naturalized by act of the British parliament, or a subject of his majesty having become such by the conquest and cession of the province of Quebec."<sup>2</sup> A provincial act (35 Geo. III, cap. II) decreed that no person who had not been a *bona fide* subject of the king for seven years preceding an election was eligible for a seat in the assembly. By a later act of 54 Geo. III (cap. IV) the term of residence was extended to fourteen years, but the old qualification was restored after the close of the War of 1812. (58 Geo. III, cap. IX.) These acts were interpreted positively to mean that settlers of the requisite standing and property qualification were entitled to vote and sit in the assembly whether their antecedents were British or American. Some of the American settlers fled from the province during the war, and the legislature passed an act declaring them aliens and confiscating their property. The presumption of the act (1814, cap. IX) was that other people who had not withdrawn from the province were *bona fide* subjects capable of holding land.

The War of 1812 left, however, its legacy of international bitterness. The government in alarm began a general campaign against everything American, including teachers and Methodist ministers.<sup>3</sup> The first step discriminating against Americans was Bathurst's order of 1814 against the further grant of land to settlers from the United States, which also forbade magistrates to administer the oath of allegiance, without special permission. In response to the vigorous protest of the assembly in 1817, Bathurst pointed out that the British laws concerning naturalization had been completely ignored in Upper Canada. The only act by which Americans could be naturalized was an act of the reign of George II (cap. VII), by which a seven years' residence and subscription to various

<sup>2</sup> Clause XXII.

<sup>3</sup> C.O. 42/366, Maitland to Bathurst, Jan. 4, 1821.



oaths and declarations were required of all persons "born out of the allegiance of his majesty" as a condition for holding land. This law was henceforth to be enforced.<sup>4</sup>

Matters were at this stage in 1821 when the death of David Hagerman necessitated a by-election in Lennox and Addington, one of the counties peopled by loyalists and Americans. The candidate returned was Barnabas Bidwell,<sup>5</sup> who was a native of Berkshire, Massachusetts. He is said to have taken no part in the American Revolution, but on its conclusion he had been elected as a representative from Massachusetts to the first Congress. From 1801 to 1805 he had been a member of the state legislature, and from 1807 to 1810, treasurer of the county of Berkshire. As such he had taken an oath in which he "renounced without equivocation or reservation all allegiance to any foreign state or power, and especially to the king and government of Great Britain."<sup>6</sup> In 1810, as treasurer of Berkshire, he had been indicted at the quarter sessions on charge of peculation and forgery to the amount of about two hundred dollars. A warrant had been issued for his arrest, but the sheriff reported that he was not to be found. He next appeared in Canada in 1812 where he took the oath of allegiance and founded one of the first schools for teaching the classics. A political satire published in New York in 1812 referred to Bidwell as being a confidential agent of the United States' government in Upper Canada, preparing the country for Hull's proclamation.<sup>7</sup> Certainly he was throughout life an avowed supporter of republican institutions.

On November 24, 1821, a petition on behalf of the defeated candidate in the by-election brought forward these details of Bidwell's past as an argument against the legality of his election to the assembly. The complaint was twofold; that Bidwell was an alien who had not conformed to the requirements of the act of 13 Geo. II, and that he was a convicted criminal. In the face of every evidence to the contrary the assembly, on November 29, by a vote of 20 to 12, rejected

<sup>4</sup> C.O. 43/41, Bathurst to Smith, Nov. 30, 1817.

<sup>5</sup> C.O. 42/374, Robinson to Bathurst, Oct. 30; Herrington, *History of Lennox and Addington*, p. 353; Herringshaw, *Library of American Biography*, article "Bidwell."

<sup>6</sup> *Canadian Archives Report*, 1898, Note C.

<sup>7</sup> *The War of the Gulls*, New York, 1812, pp. 22-23.

a motion that Bidwell was an alien. On December 31 the election was tried in the assembly, and the papers with regard to the malversation were produced. On January 2, the assembly voted that the allegations against Bidwell, even if true, were not legal disqualifications, but on January 4, by a majority of one, Bidwell was expelled. To justify its action the assembly proceeded to pass an act disqualifying persons who had held office or sat in the legislature of the United States, or who had been convicted of felony in a foreign country.<sup>8</sup> A new writ was issued for Lennox and Addington.

The electors, not so easily daunted, proceeded to present Bidwell's son, Marshall Spring Bidwell, as candidate.<sup>9</sup> The younger Bidwell had been born in Massachusetts in 1798 and had gone with his father to Upper Canada. There he had taken the oath of allegiance, had been admitted to the law society, and had acquired sufficient property to meet the qualification for the assembly. He was free from the moral stigma attached to his father's character, but he was clearly an American by birth. For this reason the returning officer pronounced him an alien and refused to recognize his nomination. His opponent was pronounced elected. The election was at once challenged in the assembly. The case was tried on February 14, and a vote that Bidwell was an alien and incapable of being elected was rejected by the house on a vote of 10 to 22. The conduct of the returning officer was declared illegal and the election void.<sup>10</sup>

The case aroused considerable commotion as it gave rise to a dilemma. If the two Bidwells were aliens, so also were the majority of the inhabitants of the province, for no one, apparently, had taken the list of oaths and subscribed to the sacrament required by the act of George II. Moreover, that act could not apply to most Americans, for they had not been *born* out of the king's allegiance. In other words, a large number, probably a majority of the inhabitants of the province, were not only disqualified from holding any public offices, but had no valid title to their property. On the other hand, as Maitland took care to point out to the Colonial Office, if men

<sup>8</sup> *Journals*.

<sup>9</sup> Appleton, *Cyclopædia of American Biography*, article "M. S. Bidwell."

<sup>10</sup> *Journals*.



born in the thirteen colonies previous to 1783 were to be regarded as British subjects, then most of the present citizens of the United States were also British subjects, for by British statutes<sup>11</sup> the children of British subjects were themselves British, regardless of their birthplace. Both Maitland and the assembly appealed to the crown praying a law might be passed to secure resident Americans in the enjoyment of their rights and privileges in Upper Canada.<sup>12</sup>

New light was thrown on the case by the decision of the law officers of the crown in England that both the Bidwells were ineligible for the assembly.<sup>13</sup> Their opinion was based on a decision of the King's Bench, *Thomas v. Acklam*, 1824.<sup>14</sup> This was the first decision on the subject since the American Revolution, and it was to the effect that a certain Elizabeth Ludlow was incapable of inheriting property in the British Empire because her father had been resident in the United States in 1783. The significance of the decision was that all residents of the United States in 1783 lost their British citizenship. The decision applied to loyalists as well as to republicans, for Ludlow had been a loyalist, and if strictly interpreted it would have put the Upper Canadian loyalists in as insecure a position as Americans. This fact was understood by the radicals, but was consistently denied by the officials, and their opinion was sustained in a second legal decision, *Auchmuty v. Mulcaster*, 1826,<sup>15</sup> which was interpreted to mean that children of soldiers who were actually enlisted in the British army in 1783, but had not left the United States until after that date, did not lose their citizenship. Thus a distinct line was drawn between genuine United Empire Loyalists and the majority of Americans who passed as such, an unfortunate distinction in the face of the bitterness caused by the War of 1812.

The decision of the law officers did not reach Upper Canada until 1825. Meanwhile, in the session of 1824, the legislature had passed an act consolidating the existing laws for the qualification of members of the assembly.<sup>16</sup> No new principle

<sup>11</sup> 7 Anne cap V ; 4 George II cap XXI ; 13 George III cap XXI.

<sup>12</sup> *Journals*, Feb. 3 ; C.O. 42/368, Maitland to Bathurst, April 5.

<sup>13</sup> *Canadian Archives Report*, 1898, Note C.

<sup>14</sup> 2 B. & C. 779 ; 4 D. & R. 394.

<sup>15</sup> 5 B. & C. 771.

<sup>16</sup> Cap. III.

was introduced into the act, and no attempt was made to define the term "alien." Marshall Spring Bidwell was returned in the provincial election of 1824, and his talents at once raised him to the leadership of the radicals. In spite of the English decision that he was not qualified, he retained his seat in the assembly, as the same principle which disqualified him would, if carried into effect, have disqualified most of the sitting members. Bathurst realized the difficulties of the situation, and by a despatch of July 22, 1825, he recommended the governor to introduce into the local legislature a bill for conferring the rights of citizenship on resident Americans.<sup>17</sup>

It was at this point that a psychological question interfered to create in Upper Canada a state of turmoil which did not subside for three years. The whole American population raised their voices in wrath at the insinuation that they were foreigners who required an act of grace to be confirmed in the possession of their property and privileges, which they had not only enjoyed for years without provocation, but had defended in a war. The loyalists, who felt secure in their position, took occasion to make bitter remarks about republicans, and society was divided into two hostile camps, on lines the same as those of the American Revolution.

According to Bathurst's instructions a bill passed the legislative council, a stronghold of loyalism, to secure aliens resident in the province in the possession of their property.<sup>18</sup> A proviso was added that the existing laws of the province concerning the qualifications of voters and members of the assembly were to be retained. This bill the assembly received with great suspicion. Because of the decision over the Bidwells, it was held that the operation of the proposed act would be narrowed to the holding of land, and that all American settlers would thereby be disfranchised. A wild rumour gained currency that the bill was, in fact, an insidious plot, couched in plausible terms, to deprive all the radicals of their seats in the assembly.<sup>19</sup> Acting under the stimulus of this scare the assembly, on December 30, 1825, passed a series of resolutions with the customary majority, in favour of the principle of

<sup>17</sup> C.O. 43/41.

<sup>18</sup> C.O. 42/377, enclosed in Maitland to Bathurst, March 7.

<sup>19</sup> C.O. 42/380, Rolph to Horton, May 18, 1826.



double allegiance, namely, that people whose fathers or grandfathers had been born in the allegiance of the British crown were British subjects by descent, even if Americans by birth.<sup>20</sup> The council's bill was returned with a declaratory amendment that "such persons have been, are, and shall be considered to be, to all intents and purposes, natural-born British subjects." An address to the king was adopted, urging that an imperial act be passed to confer on all persons resident in Upper Canada the full privileges of British subjects. A second and more impolitic address was passed in favour of the free admission of American settlers without conditions.<sup>21</sup> The council passed counter-resolutions arguing at great length to prove the legal case against Americans, and expressing indignation at the assembly's wilful confusion of Americans with United Empire Loyalists. It too appealed to the imperial parliament. The executive council reported its version of the case and the heads of a bill for the enactment of an imperial law.<sup>22</sup>

The imperial parliament, thus invoked, passed an act amending the Constitutional Act to the extent that all persons naturalized by act of the legislature of Upper Canada should be deemed capable of sitting in the assembly, voting and being called to the council.<sup>23</sup> This act necessitated a provincial act to confer privileges of naturalization, and in transmitting the imperial act Bathurst sent precise instructions for it. He asserted that it would be impossible to assent to any act laying down a general principle governing citizenship, because, according to judicial decisions, "the subjects of the United States whether born before or after the treaty of peace in 1783 are aliens and must, in point of law, be regarded in that character." Neither was the local legislature to enact any law regulating the future naturalization of aliens, as that would involve imperial policy. The proposed act was only to concern those people at present resident in the province. Of these, residents of seven years' standing were to be naturalized at once, whereas others must wait the completion of seven years. All persons applying for citizenship were to take an oath

<sup>20</sup> *Ibid.* Journals, Dec. 30.

<sup>21</sup> C.O. 42/377, Maitland to Bathurst, March 7.

<sup>22</sup> C.O. 42/377, Maitland to Bathurst, March 15.

<sup>23</sup> 7 Geo. IV, cap. LXVIII.

renouncing their American citizenship and were to be registered as naturalized British subjects.<sup>24</sup>

On behalf of the reformers in the assembly who had opposed the naturalization bill of 1826, John Rolph, a member of the assembly, had gone to England in the summer of that year.<sup>25</sup> He had been consulted by the Colonial Office at various times and had approved of the imperial act. He returned to Canada in September, after thanking the Colonial Office for its "exalted justice toward the Canadian public."<sup>26</sup> Bathurst and Horton maintained later that Rolph had seen and approved the instructions sent out in August for the provincial alien bill,<sup>27</sup> but he disclaimed all knowledge of them and, before they had arrived, he introduced into the assembly a naturalization bill which pronounced all resident settlers natural-born British subjects unless they registered their dissent within six months.<sup>28</sup> This bill was taken up by the assembly but opposed by the government on the ground that the instructions had not yet arrived. When they did arrive the officials introduced amendments to the bill.<sup>29</sup> The radicals took their stand in opposition to these changes on the ground that they were unfair discriminations against Americans, and that the government had no right to dictate to them how they should legislate. The chief objection was against a clause which required aliens to register in order to have their titles confirmed.<sup>30</sup> Three times an order to consider the bill as amended was negatived by the casting vote of the speaker. It was then reintroduced by Rolph in the hope that it might be amended according to the wishes of the radicals, but was carried in the form approved by the instructions by a surprise vote of twenty-two to eighteen.<sup>31</sup>

The excitement over the bill now reached its height. The

<sup>24</sup> C.O. 43/42, Bathurst to Maitland, Aug. 30, 1826.

<sup>25</sup> C.O. 42/380, Rolph to Horton, April 29.

<sup>26</sup> C.O. 42/380, Rolph to Horton, Sept. 4.

<sup>27</sup> *Report on Civil Government*, 1828, append. Evidence of Wilmot Horton. But see C.O. 42/382, Maitland to Horton, Feb. 4, 1828. Maitland did not believe that Rolph had seen the instructions.

<sup>28</sup> C.O. 42/382. A copy is reprinted in *Canadian Archive Reports*, 1898, Note C.

<sup>29</sup> *Upper Canada Herald*, Jan. 2, 1827.

<sup>30</sup> *Ibid.* Jan. 16, article signed "Pitt"; Jan. 30, debate in legislature.

<sup>31</sup> C.O. 42/381, Maitland to Bathurst, March 3; *Upper Canada Herald*, Jan. 23-Feb. 13, 1827; *Canadian Freeman*, Feb. 22,



newspapers were full of recriminatory articles. Several leading Americans of York formed a committee entitled "the Central Committee of the Inhabitants of Upper Canada whose rights are affected by the provisions of the Alien Bill." This committee called meetings throughout the province and circulated petitions to which they obtained several thousand signatures, urging the imperial government to disallow the alien act. It was decided to send an agent to England to advocate the cause. Rolph having refused the mission, it was conferred on a certain Robert Randall, a Virginian by birth.<sup>32</sup>

Randall was well received in England. On June 12 Joseph Hume presented his petition to the House of Commons, and his cause was actively advocated by the British radicals. After several interviews at the Colonial Office, he received a promise that the provincial act would be disallowed, and that instructions would be sent to Upper Canada for a new bill.<sup>33</sup> The Colonial Office expressly stated that no blame should be placed on the provincial executive which had explicitly followed instructions. The public reason given for disallowing the act was simply that, though its clauses had been dictated in the belief that they would prove satisfactory to the Canadians, the bill had failed to meet expectations.<sup>34</sup> This reason was exceedingly popular with the radicals, but it was not the real explanation of the disallowance. The real reason was a threat on the part of Baring and Stanley that they would discuss the general question of naturalization of aliens in parliament unless a new alien bill were adopted in Canada. Now England had always maintained in the face of American opposition that it was impossible for a British subject of his own volition to renounce his allegiance and become an American citizen. This contention had been at the basis of the dispute over the right of search, one of the causes of the War of 1812. In the face of this contention the alien bill of Upper Canada was a dangerous precedent in favour of the American point of view, since it required Americans to renounce their allegiance to the

<sup>32</sup> Lindsey, *Life and Times of W. L. Mackenzie*, vol. I, p. 126. Why did Rolph refuse the mission? There is a suspicion of double dealing in his conduct concerning the whole affair.

<sup>33</sup> C.O. 42/413, First Report of Central Committee on the Naturalization Bill.

<sup>34</sup> C.O. 43/42, Goderich to Maitland, July 10, 1827.

United States in order to obtain British citizenship in Canada. By modifying the Canadian bill, a discussion would be avoided in the Commons, and the British contentions would be saved from publicity and possible adverse constructions on the part of the Americans.<sup>35</sup>

The result of this imperial action, however, was unexpected. Party strife had been acute over the bill in the province, the radicals maintaining that they had forestalled a plot on the part of the executive to deal a blow to Americans. On the other hand, the executive had minimized the significance of the opposition to the alien bill, claiming that it proceeded from a few factious republicans who were interested in stirring up discontent against the government. But when the agent of these malcontents returned home triumphant, and Maitland was instructed to support a bill in accordance with Randall's recommendations, the mortification of the governor and his associates was extreme.<sup>36</sup> A new election was pending, and this rendered some settlement of the question imperative, so that the only course was to acquiesce in a new alien bill which was introduced into the assembly by Bidwell. This bill made no reference to aliens. It merely decreed that all persons who had received grants of land from the government, or who had held any public office, or who had taken the oath of allegiance and had been settled in the province before 1820, should be admitted to the privileges of British birth without qualification. Other persons were to be admitted to similar privileges at the completion of seven years' residence. The bill was entirely retroactive, laying down no rule for the future. It dispensed with the necessity for registration.<sup>37</sup> This bill received the royal assent on May 28, and the assembly voted an address to the king, thanking him for the disallowance of the act of 1827.<sup>38</sup>

Three important consequences followed this agitation and settlement of the alien question. In the first place, a connection was established between the radicals of Upper Canada and

<sup>35</sup> C.O. 324/97, Horton to Maitland, July 17, 1827; Horton to Robinson, Nov. 23, 1827 (private and confidential).

<sup>36</sup> C.O. 42/381, Maitland to Goderich, Oct. 2, and Aug. 28, 1827. C.O. 42/383, Maitland to Huskisson, Jan. 3 and March 13, 1828.

<sup>37</sup> C.O. 47/56, *Upper Canada Herald*, Feb. 12, 1828.

<sup>38</sup> C.O. 43/42, Horton to Maitland, May 10; C.O. 42/383, Maitland to Huskisson, March 13.



the radicals of Great Britain, who were avowed supporters of the emancipation of the colonies. The link was forged during Randall's visit, when he was attentively received by Joseph Hume. On July 21, 1827, Hume wrote to Randall that the chief difficulty in colonial relations was British ignorance of the state of the colonies. He suggested that the radicals might adopt a regular organized means of keeping the British public, "and particularly the independent members of the Imperial Parliament," informed of all complaints and grievances. He suggested that some person in England be appointed "although not publicly acknowledged," with whom a committee at York should correspond, and he offered his services for the task.<sup>39</sup> To this suggestion is to be traced the existence of reform associations which cropped up at every local disturbance in the succeeding ten years, and also the intimate connection which Hume maintained with Upper Canadian reformers.<sup>40</sup> These men looked to him as the most patriotic and influential of British politicians, and in late years he was often spoken of as the agent for Upper Canada.

Secondly, the victory being decidedly in favour of the radicals, they were rendered stronger and more aggressive than ever. The assembly of 1828 persisted in voting a grant of five hundred pounds to Randall for his services in England, and this the council persistently rejected, so that the alien bill lived on, one of the ghosts which haunted the political house of Upper Canada.<sup>41</sup>

Thirdly, the method by which they won this victory, by an appeal to Great Britain over the heads of the local executive, gave to the radicals a new outlook, the value of which cannot be too much emphasized. Henceforth it became the settled contention of the reformers of Upper Canada that they were merely striving to unmask the corruption of the local executive, and that they had no fault to find with imperial policy, except in so far as it was misguided by official misrepresentations. Mackenzie's mission to England in 1833 to appeal to Goderich on the subject of colonial grievances was inspired by Randall's

<sup>39</sup> C.O. 42/383, enclosed in Maitland to Huskisson, Jan. 3.

<sup>40</sup> The Central Union was active in 1828 and was still in existence in 1833. C.O. 42/416, Thomson to ?, May 24.

<sup>41</sup> *Journals*, March 19, 1829; Wells, *Canadiana*, pp. 162-4.

success with the same minister in 1827.<sup>42</sup> This attitude prevented for several years the dragging of the imperial connection into local politics. Though it rendered the position of Upper Canadian radicals somewhat anomalous, at the same time it gave an awkward twist to the family compact. The party striving for real local autonomy appealed to the home government to exercise its authority over the colony, while the party denying local autonomy in Upper Canada, was led to assert it in England.

Another result that might have been expected from this settlement of the alien question did not follow,—the halting of American immigration by an unfriendly law. Though only by special acts of parliament, imperial or provincial,<sup>43</sup> could foreigners now become naturalized British subjects with legal authority to hold lands, they still continued to pour up over the frontier. If the law did not welcome them, the cheap lands did. In November, 1831, Colborne wrote to Hay in alarm because of the number of Americans who were entering the province and acquiring land by private purchase, in spite of the law. Goderich agreed to the impolicy of such immigration, but nothing further was done.<sup>44</sup>

<sup>42</sup> Lindsey, vol. I, p. 136.

<sup>43</sup> A provincial act to alter the state of affairs was disallowed in 1829. C.O. 42/388, Colborne to Murray, May 16.

<sup>44</sup> C.O. 42/394, Colborne to Goderich, Nov. 25; C.O. 43/43, Goderich to Colborne, Jan. 10, 1832.



## CHAPTER VI

### THE CLERGY RESERVES

THE divergence between British policy and public opinion in Canada after 1791 was more clearly defined and evoked more bitterness in the sphere of religion than in any other. Whatever local disputes might cause temporary excitement, one permanent grievance was never lost sight of by the people of Upper Canada, the attempt of the British government to establish in the province a state-supported church. The story is not a pleasant one, involving as it does a war of words between the highest ecclesiastical dignitaries of the province. The dispute little befitted their station and principles, but some examination of it is essential to an understanding of the political situation.

The Constitutional Act of 1791 provided a permanent appropriation of lands for religious purposes.<sup>1</sup> "For the support and maintenance of a protestant clergy" the governor was authorized to set aside lands equal to one-seventh of all those granted in the past, or to be granted in the future for other purposes.<sup>2</sup> All the rents and emoluments of these lands were to be applicable "solely to the maintenance and support of a protestant clergy within the province in which the same shall be situated." The crown might authorize the governor of each province, with the advice of his executive council, from time to time, "to consolidate and erect, within every township or parish which now is or hereafter may be formed . . . one or more parsonage or rectory . . . according to the establishment of the Church of England; and from time to time, by an instrument under the great seal of the province, to endow such parsonage or rectory, with such part of the reserves as might be deemed expedient in each township." To these parsonages his majesty might authorize the governor to present

<sup>1</sup> Clauses 35 to 43.

<sup>2</sup> The question of the clergy reserves of Lower Canada is not here considered.

an incumbent or minister of the Church of England, and all such ministers " should hold and enjoy the same, and all rights, profits and emoluments thereunto belonging or granted, as fully and amply, and in the same manner, and on the same terms and conditions, and liable to the performance of the same duties as the incumbent of a parsonage or rectory in England." The parsonages were to be placed under the jurisdiction of the Bishop of Nova Scotia.<sup>3</sup> These clauses of the act could be varied or repealed by any act of the provincial legislature, provided it was previously laid for thirty days before each house of the imperial parliament.

This legislative provision for a protestant clergy in the colonies formed an innovation in colonial policy. It may be attributed to several causes. The most important was the American Revolution. After 1783 the Society for the Propagation of the Gospel in Foreign Parts had approached Lord Sydney, urging that an appropriation of lands be made in Upper Canada to accommodate the loyalists by establishing the Church of England.<sup>4</sup> After 1783 a conviction became current in England that the absence of a church establishment was one of the causes of the spread of democracy which had inundated the older British empire. The antidote for this disease must be provided in the remaining colonies. In 1791 Simcoe, the prospective governor of Upper Canada and a member of the imperial parliament, wrote as follows :

" In regard to the colony of Upper Canada which is peculiarly situated among a variety of republics, every establishment of church and state which upholds a distinction of ranks and lessens the undue weight of the democratic influence must be indispensably introduced."<sup>5</sup>

This was typical of the British point of view. But another important cause of the church establishment was a desire to neutralize the power of the Roman Catholic Church. The Quebec Act of 1774, which had guaranteed the Roman Catholics their accustomed dues and rights, decreed that it should be lawful for his majesty " to make such provision out of the rest of the said accustomed dues and rights for the encouragement of a

<sup>3</sup> The diocese of Nova Scotia was erected in 1787. The Anglican See of Quebec was erected in 1795.

<sup>4</sup> Shortt and Doughty, *Documents*, vol. II, p. 1030.

<sup>5</sup> Lindsey, *The Clergy Reserves*, p. 4.



protestant religion, and for the maintenance and support of a protestant clergy within the said province." The governor's instructions had authorized him to receive tithes for the support of the clergy from the protestant population, and this power was continued by the Constitutional Act. For all these reasons the British parliament was practically unanimous in its support of the clergy reserves. Even Charles James Fox, the most enlightened critic of the bill, limited his criticism to the amount of the reservations.<sup>6</sup>

In accordance with instructions, the clergy reserves were laid out in Upper Canada as the land was surveyed. Townships containing about 63,000 acres were divided into lots of 200 acres, of which every seventh was reserved. Then, whenever an allotment of 200 acres was made to a private individual, an amount equal to one-seventh of this, or twenty-eight and four-sevenths acres of the neighbouring reserve, was allotted to the clergy. This was strictly in accordance with the Constitutional Act, but, in fact, as time went on, instead of reserving one-eighth of the land, the whole of every seventh lot of 200 acres was pronounced a clergy reserve. Where land had already been alienated before 1791 an amount equal to one-seventh was reserved elsewhere. But in two-thirds of the townships, one-seventh of the land was reserved for the clergy, instead of one-eighth as indicated by the act of 1791.<sup>7</sup> In fact, the people cared little for these minute calculations, and from the beginning it was always asserted both in England and in Canada, that one-seventh of the land had been reserved for a protestant clergy.

The fatuity of the appropriation was soon apparent. The reserves were open for lease, but in a province where land was given away with a lavish hand, leasing proved impracticable. As late as 1824 the annual revenue from the leased reserves was only 150*l.*, and the clergy of the Church of England in Canada were dependent for their maintenance entirely on the Society for the Propagation of the Gospel.<sup>8</sup> As a result there

<sup>6</sup> *Parliamentary History*, April 8, 1791.

<sup>7</sup> Lord Durham's *Report*, append. I; C.O. 42/370, Maitland to Wilmot, Sept. 30, 1823. It would appear that in most townships the arrangement in practice for the reservation of crown and clergy reserves led to a slight surplus over one-seventh. See Paterson, *Land Settlement in Upper Canada*, p. 46.

<sup>8</sup> C.O. 42/394, Maitland to MacMahon, enclosed in Colborne to Goderich, Dec. 14.

were in Upper Canada over two million acres of land dispersed in lots of two hundred acres in the midst of the settled districts.<sup>9</sup> This land, along with a similar appropriation of equal dimensions for crown reserves, became an economic nuisance almost intolerable as the province advanced in population. It was on this ground that the earliest complaints were levied against the reserves. The case was well stated by a committee of the House of Commons in 1828.<sup>10</sup>

"We entertain no doubt that these reserved lands, as they are at present distributed over the country, retard more than any other circumstance, the improvement of the colony, lying as they do in detached portions in each township, and intervening between the occupations of actual settlers who have no means of cutting roads through the woods and morasses which separate them from their neighbours. The allotment of these portions of reserved wilderness has, in fact, done more to diminish the value of the six parts granted to settlers than improvement of their allotments has done to increase the value of the reservations."

It was not until 1819 that a new question was raised with regard to the clergy reserves, namely, the interpretation of the phrase "a protestant clergy." In 1819 a Presbyterian congregation at Niagara, whose church had been burned down during the war, petitioned the government for a grant of 100/. "out of the funds arising from clergy reserves, or any other fund at your excellency's disposal."<sup>11</sup> In transmitting this petition to England, Maitland asked whether these reserves were for the benefit of the Church of England alone. The chief justice of Upper Canada contended that all denominations were entitled to share the proceeds, and this opinion raised new hopes among those who were not adherents of the Establishment.<sup>12</sup> In response to this query the law officers of the crown gave their opinion that the Church of Scotland was entitled to a share of the reserves but not to the endowment of rectories. Dissenters had no claim.<sup>13</sup>

This decision was not made public in Canada, but the

<sup>9</sup> C.O. 42/370, Maitland to Wilmot, Sept. 30.

<sup>10</sup> *Report on Civil Government of Canada*, p. 9.

<sup>11</sup> C.O. 42/362, Maitland to Bathurst, May 17, 1819.

<sup>12</sup> C.O. 42/362, Maitland to Bathurst, June 4, 1819.

<sup>13</sup> C.O. 43/41, Bathurst to Maitland, May 6, 1820.



Church of Scotland continued after 1819 to press its claims to a share of the reserves. The Church of England claimed that by the Act of Uniformity, 1 Elizabeth, cap. I,<sup>14</sup> the establishment was extended to the colonies; that by the coronation oath the king undertook to preserve inviolate the settlement of the united Church of England and Ireland and "the territories thereunto belonging"; that the act of 1791 carefully stipulated the "Church of England" in the clauses relating to the rectories, and that Upper Canada was a part of the Bishopric of Quebec, which was a part of the episcopal Province of Canterbury. It was pointed out that the Church of England alone had been empowered to solemnize marriage in Upper Canada until a provincial act of 1798 (cap. III) had extended the privilege to ministers of the Church of Scotland, to Lutherans and to Calvinists, under special conditions. Moreover, a special act of the provincial legislature had been required in 1823 to take from the Church of England its right to collect tithes.

The argument of the Church of Scotland had also points in its favour. Upper Canada had been acquired after the Act of Union of 1707, and therefore belonged not to England but to Great Britain, which had two religious establishments. This claim was particularly strong in view of the fact that the proportion of Scottish and Protestant Irish as compared to men of English descent was greater in Canada than in the British Isles. The Church of Scotland quoted Fox as saying on the authority of Dundas, Secretary of the Home Department in 1792, that according to the act of 1791 "the clergy of the Kirk would have larger incomes in Canada than in Great Britain,"<sup>15</sup> and it was argued that Dundas, a Scotsman, would not have approved of an act which discriminated against his own church. Though the fact was not known in Upper Canada, some regard must have been taken for the claims of the Church of Scotland in 1791. In 1793 Lord Dorchester as governor-in-chief wrote to England supporting a grant to the Presbyterian ministers at Montreal and Quebec. Dundas replied sanctioning the grant, and added, "But the allowance should be under-

<sup>14</sup> Though this statute was passed before any colonies were acquired, it was held to anticipate them in the phrase "or within any other your majesty's dominions or countries that now or hereafter shall be."

<sup>15</sup> *Parliamentary Register*, 1791, p. 415.

stood to be merely temporary and discretionary on the part of your lordship, for your lordship will recollect in framing the Canada Act, that the reservation for the church and the crown in all grants of land was fixed at a larger proportion than was originally intended, with a view to enable the king to make from these reservations, such an allowance to Presbyterian ministers, teachers and schools, as his majesty should from time to time think proper."<sup>16</sup>

The controversy in Upper Canada was but a phase of a question of general imperial import raised by the Synod of the Church of Scotland. In India after 1813 a government grant had been made to a chaplain of the Church of Scotland, though the grant was not regularized until the charter of 1833 had made definite provision for him.<sup>17</sup> In Lower Canada the Church of Scotland was stronger than in Upper Canada, and Dalhousie, the governor from 1820 to 1828, himself an elder of the Church of Scotland,<sup>18</sup> exerted every influence in support of its claims. Such facts made the Colonial Office very cautious, and in spite of constant pressure brought to bear by the bishop and officials of the Canadas, it never publicly maintained that the Church of England was the established church of the colonies.

The two churches engaged in this quarrel took no account of the fact that the large majority of the people for whom the reserves had been set aside were adherents neither of the Church of England nor of the Church of Scotland, but were dissenters of long standing, who had inherited a rooted antipathy against church establishments of any kind. It is as incorrect to assume that the majority of the United Empire Loyalists were members of the Church of England as that they were supporters of the family compact. Though it is true that most of the high officials immediately surrounding the governor were Churchmen, the Rev. John Stuart, first minister of the Church of England in Upper Canada, wrote in 1790, that "a very great majority of all the settlements is composed of Presbyterians, Anabaptists and other dissenters."<sup>19</sup> James McGill, a prominent loyalist, wrote as follows :

<sup>16</sup> C.O. 42/98, Dundas to Dorchester, May 11, 1794.

<sup>17</sup> *Bathurst Papers, Historical Manuscripts Commission*, Bathurst to Melville, May 15, 1824.

<sup>18</sup> C.O. 42/370, Strachan to Hillier, April 11.

<sup>19</sup> *Kingston Register*, p. 18.



"Indeed the caution with which everything relating to the church or dissenters is guarded in the act of parliament which establishes our constitution, and the zeal and tenacity of the executive government on this head, has always astonished me. Where a particular system has long been adopted and acted upon, some evil may perhaps result from a change, although in its principles it may be neither just or expedient, and, at all events, there is the bugbear, innovation, to guard the abuse ; but to make this abuse an essential principle, and when a government is to be formed, as in the present case, among a people composed of every religious denomination and nineteen-twentieths of whom are of persuasions different from the Church of England, to attempt to give to that church the same exclusive political advantages that it possesses in Great Britain, and which are even there the cause of so much clamour, appears to me to be as impossible as it is unjust."<sup>20</sup>

It is futile to attempt to ascertain the relative numbers of the adherents of the various churches. The Methodists were by general admission the strongest sect in the colony. Their organization of itinerant preachers and their simple and emotional methods of worship were peculiarly adapted to please the Canadian pioneers. Statistics compiled by the Methodists in 1820 represented that there were in the colony 221 recognized Protestant ministers, of whom 16 were Anglican clergymen, 15 Presbyterians, 25 Baptists, 10 Quakers, and 33 itinerant Methodists, besides 47 local Methodist preachers and 65 licensed exhorters.<sup>21</sup> Another set of statistics for 1827 gives 30 ministers of the Church of England, 45 Baptists, 16 Presbyterians and upwards of 60 Methodists.<sup>22</sup> These figures are unreliable in themselves, and they make no account of Roman Catholics and many minor sects. There is, however, no doubt that adherents of the Church of England were in a minority, in spite of the many advantages which that church enjoyed. Its ministers received assistance from abroad, it had greater provincial resources than any other church, and it had almost a monopoly of the solemnization of marriage

<sup>20</sup> *Kingston Register*, p. 20.

<sup>21</sup> Finlay and Holdsworth, *Wesleyan Methodist Missionary Society*, vol. I, p. 384.

<sup>22</sup> C.O. 42/416, Rogerson to Stanley, July 2, 1833.

until 1831.<sup>23</sup> However, the influx of emigrants from Great Britain after 1815 did little to strengthen the Church of England, as they were mostly Scottish and Irish Presbyterians and Roman Catholics or English dissenters.<sup>24</sup>

The executive of Upper Canada regarded with extreme repugnance the tendencies to fanaticism, and the propensity to split into innumerable sects, which characterized the people. Governors like Sir Peregrine Maitland and Sir John Colborne considered that the promotion of the Church of England was an essential part of their mission. They were impervious to argument on the basis of the numerical strength of the various churches, for in their eyes the multiplicity of dissenters was the strongest reason for strengthening the establishment of the Church. In addition to the governors, the Church had two exceptionally strong advocates in John Beverley Robinson, chief-justice after 1829,<sup>25</sup> and John Strachan, archdeacon of York after 1828 and a prominent member of the two councils, whose life was devoted to the support of the Church of England and to a campaign against all the ramifications of democracy. To such men as these and to Lord Bathurst at the Colonial Office, a monarchy and an established church were the only bulwarks against the abhorred democracy which they saw seething over the American boundary line.<sup>26</sup>

It was for this reason that they regarded the Methodists with peculiar distrust. Before the War of 1812 all the Methodist ministers in Upper Canada had been sent from the United States and returned to the States on the change of their station. After the war British Wesleyans entered the province, and there ensued a period of bitter dissension between the American and British Methodists which was only lulled by an agreement in 1820 that the Wesleyans should confine their missions to Lower Canada and the Episcopal Methodists to Upper Canada.<sup>27</sup> In 1824 a separate Canadian Conference was formed to minimize the aspersions cast on the Episcopal Methodist ministers as foreigners, but it was not until 1828 that the

<sup>23</sup> An act of 1834 (cap. I) finally conferred on dissenters the power to solemnize marriages.

<sup>24</sup> Figures for 1839 are given in *A. & P.*, XXXIV, 1839.

<sup>25</sup> Robinson, *Life of Sir John Beverley Robinson*.

<sup>26</sup> C.O. 43/41, Bathurst to Maitland, July 24, 1821, is typical.

<sup>27</sup> Finlay and Holdsworth, *op. cit.*, vol. I, p. 386; Wesleyan Missionary Society Incoming Letters, Canada, vols. I and II.



conference succeeded in severing all connection with the United States. In the next year, 1829, the Methodists launched boldly into politics and founded their organ, the *Christian Guardian*, with the motto, "Liberty and Equal Rights." The paper soon developed a wide circulation, and its editor, Egerton Ryerson, son of one of the earliest loyalists, became a force to be reckoned with.<sup>28</sup>

The decision of the law officers in 1819 was the first serious event in the long war against the clergy reserves. The assembly was at first very cautious. In 1824 it voted a series of resolutions to the effect that the Churches of England and Scotland had been placed on an equality by the Act of Union, and that if an adverse construction should be given to the appeal of the Scottish church for a part of the reserves, other aid should be accorded it.<sup>29</sup> But in 1826, by a vote of 31 to 2, the assembly took the stand which the reformers never forsook until the final settlement of 1854, that the reserves should be sold and the proceeds devoted to general education.<sup>30</sup> An address to this effect was sent to the king,<sup>31</sup> and in 1827 the first bill for the purpose passed the assembly, but was lost in the legislative council.

A period of more acute strife was at hand. In 1819 the direction of the clergy reserves had been entrusted to a corporation of the clergy of the Church of England in Upper Canada, which, however, had not the requisite power to open them for sale. Early in the 'twenties it became apparent to the members of the Church and the government that it would be wise to sell some of the reserves. This would mitigate the economic objection to them, it would dispose of wild lands which might otherwise be an attraction to an invading enemy, it would supply a fund from which to support the clergy, and it would secure to the church profit from possessions which had already begun to be challenged. By this time the reserves in the older districts could command a reasonable price. Accordingly, an attempt was made to include half of the reserves in the lands turned over to the Canada Company

<sup>28</sup> Ryerson, *Story of My Life*, chap. XIII; C.O. 42/366, Maitland to Bathurst, Jan. 4, 1821; Finlay and Holdsworth, *op. cit.*, vol. I, chap. VIII.

<sup>29</sup> C.O. 42/372, Maitland to Bathurst, Jan. 21, and enclosures.

<sup>30</sup> *Report on Civil Government*, 1828, append., p. 219.

<sup>31</sup> C.O. 42/377, Maitland to Bathurst, March 7.

in 1826, but Strachan objected that the price offered (3s. 6d. per acre) was too low, and the agreement fell through.<sup>32</sup> Strachan then proceeded to apply to the British government for power of sale. In this he was ultimately successful, and the imperial act, 7 and 8 George IV, cap. CLXII, empowered the governor, with the consent of the executive council, to sell one-fourth of the reserves at the rate of a hundred thousand acres a year. The proceeds were to be vested in the public funds of Great Britain, and the interest was to be applied to improve the remaining reserves or for the uses of the Church.

In the discussions concerning the bill an unfortunate incident occurred. The Scottish members of parliament, including Joseph Hume, were strenuously opposed to the bill, as unjust to the Church of Scotland. To strengthen their case they circulated certain representations with regard to the relative strength of the Churches of England and Scotland in Canada. These were to the effect that there were thirty congregations of the Church of Scotland in Upper Canada, whereas the clergy of the Church of England, though numerous, had no congregations of importance. Horton called upon Strachan to answer these charges, and accordingly he drew up his reply, which was printed by the House of Commons. It was dated May 16, 1827. In it he argued that the tendency of the people was towards the Church of England, and no sooner was a church erected in a district than the inhabitants deserted the sectaries. He maintained that, with the exception of two ministers of the Church of Scotland and one Wesleyan, the other dissenting ministers came from the United States and disseminated doctrine hostile to the civil and religious institutions of the mother country. To the letter was appended an ecclesiastical chart enumerating thirty clergy of the Church of England, six independent Presbyterians, and two ministers of the Church of Scotland. Incidentally he added that there were perhaps twenty or thirty Methodists. "The other denominations have very few teachers and those seemingly very ignorant."<sup>33</sup>

It is true that this chart was written from memory to refute certain exaggerated claims of the Church of Scotland,

<sup>32</sup> C.O. 42/375, Maitland to Bathurst, Jan. 19, 1825; Bethune, *Memoirs of Bishop Strachan*, pp. 100-123.

<sup>33</sup> C.O. 42/382, contains a copy of the letter and chart.



and it was concerned only incidentally with the nonconformists, but Strachan had issued a similar chart in Upper Canada in 1826 which had caused much umbrage, and only a man very much out of touch with local feeling, or supremely contemptuous of public opinion, could have reproduced his first chart, under circumstances of public importance, without some qualifying explanation. When the printed copy reached Upper Canada, great excitement was aroused. The radicals affected to believe that Strachan, who was paid out of the funds from the clergy reserves, had proceeded to England for the express purpose of hoodwinking the Colonial Office concerning the strength of the various churches. The agitation was the more pronounced as it occurred while yet the alien question was under discussion.<sup>34</sup>

Indignant petitions poured in upon the assembly, which appointed a select committee on the subject. The committee examined fifty-one witnesses, and its report was a dignified refutation of the representations of the letter and chart, and a condemnation of its author. "It would be unjust and impolitic to exalt this church, by exclusive and peculiar rights, above all others of his majesty's subjects who are equally loyal, conscientious and deserving. A country in which there is an established church from which a vast majority of the subjects are dissenters, must be in a lamentable state. . . . If the church is incorporated with the state, they are compelled by the obligations of conscience to oppose one of the civil institutions of the country, a part of the government itself." Then followed a eulogy of the Methodists as the pioneers of religion in the province, and a resolution that the reserves be sold for the purposes of education.

This report, one of the best ever issued by the provincial assembly, is typical of the reasoned liberalism of Marshall Spring Bidwell, chairman of the committee. It was printed with a chart giving figures of the strength of the various denominations very different from those of Strachan, and five thousand copies were scattered about the province.<sup>35</sup> The

<sup>34</sup> The *Upper Canada Herald*, April 29, 1828, to June 17, 1828, published Strachan's defence before the Legislative Council; Ryerson, *Story of My Life*, pp. 47-84.

<sup>35</sup> *Journals of Assembly*, 1828, Appendix, Report on the Petition of Berkeley Waters and Others. C.O. 42/384, Maitland to Huskisson, May 12, 1828.

assembly adopted an address to the same effect which it sent to the Colonial Office.

The address of the assembly was not left to plead the cause alone. The central committee which had sent Randall to England in connection with the alien question now sent the Rev. George Ryerson, brother of Egerton Ryerson, with numerous petitions from the Methodists.<sup>36</sup> Dalhousie from Lower Canada sent his word of censure,<sup>37</sup> and from Scotland the General Assembly forwarded a formal protest.<sup>38</sup>

For all these reasons the clergy reserves question was investigated in some detail by the committee on the civil government of the Canadas which reported in 1828, and its report formed an additional weapon in the hands of the reformers. In the evidence brought before the committee Viscount Sandon stated that Grenville, the author of the act of 1791, had told him that the proceeds of the clergy reserves were to be applied to any denomination not Roman Catholic.<sup>39</sup> Other witnesses gave unanimous testimony of the relative weakness of the Church of England, and the report embodied their views. It also stated that in the opinion of the committee the reserves should be applied to any protestant clergy. This report, like that of the law officers in 1819, was not adopted by the House of Commons nor embodied in any judicial decision, and it was not regarded by Churchmen as carrying any official validity, but it had great moral influence and confirmed the impression of the reformers that it was the provincial executive and not the British government, to whom they owed their wrongs.

The clergy reserves question, while the most important manifestation of the controversy over religion, was by no means the only one. In a previous chapter<sup>40</sup> it has been related that provision was made in 1807 for district schools and in 1816 for common schools. These schools were supported partly from the children's fees and partly from a government grant. Their establishment and regulation were based on provincial statutes, and it seemed that here at least the

<sup>36</sup> Ryerson, *Story of My Life*, pp. 83-4.

<sup>37</sup> *Canadian Archives Report*, 1897-8, Dalhousie to Horton, Oct. 23, 1827.

<sup>38</sup> C.O. 42/382, Bell to Stanley, Nov. 18.

<sup>39</sup> Append., p. 180, evidence of Sandon.

<sup>40</sup> Chap. I, Introduction, p. 15.



legislature was to exert its control. Sir Peregrine Maitland had other designs. He wrote home that the common schools of Upper Canada were under American masters and that the books used were "studiously composed with a view to instilling principles into the pupil's mind unfriendly to our form of government."<sup>41</sup> To remedy the situation he proposed to establish in each district schools based on the Bell Monitor System, which had been making progress in England since 1811. The first masters were to be procured from England, the schools themselves would train further teachers, and the children would receive instruction according to the doctrines of the Church of England. Maitland proposed to finance these schools from 549,207 acres of school reserves which had lain dormant since their allotment in 1798.<sup>42</sup> In 1823 Bathurst gave his sanction to the plan, but before Maitland had received his instructions he founded a trial school at York, which he financed from the crown revenues. In 1820, when the school was established, the parliamentary grant to grammar schools was reduced, and the district board of education, appointed by Maitland, discontinued its grant to Mr. Appleton, teacher of the York Grammar School, on the ground that the two schools were not needed in the same town. The governor's school was established in the buildings formerly used by the grammar school, and Appleton found himself unemployed.<sup>43</sup> He appealed to the governor, to the board of education, and finally to the assembly, where he found a ready response. What right had the governor, out of the crown revenues, without legislative sanction, to establish a church school to replace a regular township school? The case, insignificant in itself, was well adapted to create discord, as it involved two issues,—the extent of executive authority and the establishment of the Church of England. A committee of the assembly reported in 1828 that the "national school . . . ought not to be supported by the revenue of a country struggling against ecclesiastical exclusion," and an address was voted to the governor to advance to Appleton the salary he had failed to receive since 1820.<sup>44</sup> The address being ignored, it was re-

<sup>41</sup> C.O. 42/366, Maitland to Bathurst, Jan. 4, 1821.

<sup>42</sup> *Documentary History of Education in Upper Canada*, vol. I, pp. 11-20.

<sup>43</sup> *Ibid.*, vol. I, pp. 176-80.

<sup>44</sup> *Journals*, 1828, March 20.

introduced in various assemblies until 1835.<sup>45</sup> Complaints were also levelled against the district schools as being too much under government and church influence, because the governor appointed the boards of education.<sup>46</sup>

According to Bathurst's instructions of 1823, a general board of education for the whole province was appointed by the governor.<sup>47</sup> The board, a very useful establishment, met with disapproval as being unauthorized by act of the provincial legislature. Its president was John Strachan, who was paid a salary of 300*l.* from the crown revenues, and all its members were prominent Churchmen. Its object was to render the school reserves available for the promotion of church schools. Strachan at once began a campaign for the establishment of a university, and as a result of his exertions a charter was granted in March, 1827.<sup>48</sup> The Bishop of Quebec was to be visitor of "King's College"; the lieutenant-governor, chancellor; the archdeacon of York (Strachan), president; and the college council was to consist of the chancellor and president and seven professors, all to subscribe to the thirty-nine articles. On February 29, 1828, the governor's secretary presented this charter to the assembly<sup>49</sup> and informed the house that the university was to be endowed with 225,944 acres of crown lands, which had been received in lieu of an equal number of inferior school lands. It was also to receive a grant of 1000*l.* per annum for sixteen years from the payments of the Canada Company.

The assembly at once referred this charter to the committee on Strachan's ecclesiastical chart, which reported that a sectarian university was not adapted to the character and circumstances of the people. An address to the king was passed by a vote of 21 to 9, urging that the charter be cancelled.<sup>50</sup>

Once more the committee of the House of Commons on civil government in the Canadas supported the reformers and

<sup>45</sup> *Journals*, 1835, append., vol. II, no. 65.

<sup>46</sup> *Journals*, March 16, 1829. Report of Select Committee on Education. C.O. 42/388, Colborne to Murray, April 10.

<sup>47</sup> *Documentary History of Education*, vol. III, pp. 1-8.

<sup>48</sup> C.O. 43/42, Bathurst to Maitland, March 31, 1827; *Documentary History of Education*, vol. I, chap. XLIII.

<sup>49</sup> *Journals*.

<sup>50</sup> C.O. 42/384, Maitland to Huskisson, May 12, and enclos.



recommended that the charter be altered to exclude religious tests. Sir George Murray, the new Secretary for the Colonies, acknowledged the weight of the popular objections to the charter, and asked the governor to invite opinions of the type of charter desired by the provincial legislature.<sup>51</sup> These instructions Colborne, who became governor in 1828, did not reveal to the legislature, but having convened the college council he stated that no further steps would be taken towards bringing the university into operation. His conduct misled both the reformers and the tories, who were left in the dark concerning the policy intended. Colborne's idea was to drop the university for the time being and to found in its stead an advanced grammar school under his special patronage. The result was the immediate foundation of Upper Canada College. It was endowed with 60,000 acres of school reserves, and it received a grant of 200*l.* annually from the funds of the Canada Company. Teachers were procured from England, and the school was opened in January, 1830.<sup>52</sup> Though it was opposed by the extreme radicals as an institution for the rich, that was supported out of the crown revenues, it seems to have been popular with most Upper Canadians. The establishment was in accordance with the wishes of the Colonial Office, which realized that exclusive universities in New Brunswick and Nova Scotia had failed, and that there was greater need for improvement in secondary education than for a university.<sup>53</sup>

The university charter was bandied about year after year between the council and assembly. The assembly introduced impossible bills<sup>54</sup> by which the college council was to be renewed every four years by the provincial legislature, and the university was to eschew any religious instruction, whereas the council denied the right of the province to amend a royal charter and refused all but the most trivial alterations in the direction of abolishing ecclesiastical control.<sup>55</sup> In 1831 the assembly petitioned that the proceeds of the school reserves be turned over to the legislature, and in 1833 this request was

<sup>51</sup> C.O. 43/42, Murray to Colborne, Sept. 29, 1829.

<sup>52</sup> *Documentary History of Education*, vol. I, Education under Sir John Colborne.

<sup>53</sup> C.O. 324/89, Hay to Colborne, Dec. 4, 1828 ; July 28, 1829. C.O. 43/43, Goderich to Colborne, Dec. 20, 1830.

<sup>54</sup> For example, C.O. 42/425, unsigned to Colborne, July 17, 1835.

<sup>55</sup> *Documentary History of Education*, vol. II, chap. V.

granted, the general board of education was abolished, and the first victory was won in the struggle against religious exclusiveness.<sup>56</sup> On November 2, 1831, Lord Goderich sent instructions requesting the corporation of King's College to surrender its charter and the endowment accompanying it.<sup>57</sup> He delegated to the provincial legislature complete power of dealing with the subject. The council refused to surrender the charter until a new settlement had been reached,<sup>58</sup> and Colborne despaired of any local agreement being achieved, but in 1837 the council gave way, and a local act (7 Wm. IV, cap. XVI) amended the charter. The judges of the King's Bench were to be visitors, and no religious test was required of members of the council.

It will be observed that, in this long struggle over education, the Colonial Office supported the Church until 1828, when the agitation over the clergy reserves, the common schools and the university reached a climax. But 1828 was the year when the cause of religious liberty in England gained its great victory in the repeal of the Corporation Acts, and from that year dates a change in the attitude of the Colonial Office. Henceforth the reformers of Upper Canada had no complaint against the mother country on the score of educational policy. Though the struggle continued with unabated fury throughout the 'thirties, the attack was directed, not against the Colonial Office, but against the family compact.

With regard to the clergy reserves the attitude of the Colonial Office was not so decided, but it produced a similar result. The policy was two-fold; to authorize the local legislature to pass an act for reinvesting the reserves in the crown, and, secondly, until this was achieved, to appease the leading churches by making them grants out of the casual and territorial revenue. Each of these aspects of the reserves question demands attention.

An early suggestion to reinvest the reserves in the crown was made by Sir John Colborne in 1829.<sup>59</sup> Even stronger pressure was brought by the people to bear on the Colonial Office. In 1830 a number of prominent reformers organized

<sup>56</sup> *Journals*, Nov. 30, 1833.

<sup>57</sup> C.O. 43/43.

<sup>58</sup> C.O. 42/411, Colborne to Goderich, April 2, 1832.

<sup>59</sup> C.O. 42/389, Colborne to Murray, August 19.



themselves as the " Friends of Religious Liberty " and elected Robert Baldwin, a churchman, president. They circulated for signature a petition reciting all the arguments against the reserves. It was pointed out that, of eighteen members of the Church in the assembly of 1827, only three had voted against the appropriation of the reserves for general education.<sup>60</sup> The assembly of 1831 was notoriously conservative, and yet a strongly worded address against the reserves passed by a vote of 30 to 7.<sup>61</sup> George Ryerson was again sent to England to advocate the cause.<sup>62</sup>

Feeling in the province ran high, and Goderich could not ignore the gravity of the situation. He sent Colborne the draft of an act to repeal those clauses of the act of 1791 which related to the appropriation of the reserves, and to invest in the crown the reserves already set aside.<sup>63</sup> This bill and an accompanying message Colborne transmitted to the assembly. The message unfortunately contained an express stipulation that the crown could never consent to abandon the interests of the Church with a view to any objects of temporary or apparent expediency, and that the sole cause of the present action was a conviction that the reserves were financially unprofitable. This middle course pleased nobody. The assembly looked coldly at the bill as introduced by the attorney-general, and in the next session again passed resolutions in favour of selling the reserves for educational purposes.<sup>64</sup> The clergy on the other hand remonstrated against the surrender of their establishment.<sup>65</sup> Consequently, the Colonial Office washed its hands of the whole question on the ground that the next step rested with the provincial legislature. The struggle in the colony continued unabated, and no settlement had been reached at the time of the rebellion.

The first proposal to grant money to any other denomination than the Church of England was made in favour of the Roman Catholic Church, whose claims on behalf of the Glengarry Highlanders were strongly pressed by their able bishop,

<sup>60</sup> C.O. 42/395, Petition.

<sup>61</sup> C.O. 42/395, Proceedings of Assembly, March 12, 1831.

<sup>62</sup> C.O. 42/393, Colborne to Hay, March 25, 1831; C.O. 42/395, Ryerson to Goderich, June 5.

<sup>63</sup> C.O. 43/43, Goderich to Colborne, Nov. 21, 1831.

<sup>64</sup> C.O. 42/411, Colborne to Goderich, Feb. 13.

<sup>65</sup> C.O. 42/416, Memorial.

Alexander Macdonell. Orders to pay the salary of three clergymen and three teachers were laid before the assembly by the governor in two annual estimates as early as 1820, but they were ignored.<sup>66</sup> When the formation of the Canada Company gave the crown a new source of revenue, it was deemed expedient to grant to the clergy of the Roman Catholic Church an annual sum of 750*l*. This was increased at various times until it ultimately reached 1000*l*.<sup>67</sup> In return the bishop agreed to exert every influence in his power on behalf of the crown.<sup>68</sup> He carried out his promises so literally that in 1833 a definite split took place among the Roman Catholics, the radicals among them espousing the cause of the bishop's vicar-general, Wm. John O'Grady, a turbulent priest of bad reputation. So acute was the strife that open riots took place in the Catholic church at York.<sup>69</sup> The O'Grady faction accused Macdonell of misappropriation of the government grant, but failed to establish their charge.

The Church of Scotland was also granted a yearly allowance from the funds of the Canada Company and received glebe lots for its churches but, as its pretensions were to equality with the Church of England, this assistance was not productive of much gratitude. The independent Presbyterians, who were more numerous than the members of the Kirk, petitioned for aid in 1832 and were awarded 700*l*. out of the casual and territorial revenue.<sup>70</sup>

The grant to the Methodists had a more important history. The policy of the government, recommended by Maitland in 1827 and adopted by Colborne, was to neutralize the powerful influence of the Episcopal Methodists by encouraging other Methodist societies. In 1833 a grant of 666*l*. was made to a branch of seceders from the Methodist Church known as the Ryanites.<sup>71</sup> In 1832 the British Wesleyan Methodists were induced by the promise of government assistance to

<sup>66</sup> C.O. 42/365, Maitland to Bathurst, March 6, 1820.

<sup>67</sup> C.O. 42/415, Colborne to Stanley, Dec. 26, 1833.

<sup>68</sup> C.O. 42/377, Maitland to Bathurst, June 12.

<sup>69</sup> C.O. 42/415, Colborne to Stanley, Dec. 26; C.O. 42/419, Colborne to Hay, July 12, 1834; *7th Report on Grievances*, Evidence of O'Grady.

<sup>70</sup> C.O. 43/43, Goderich to Colborne, Nov. 22, 1832.

<sup>71</sup> C.O. 42/388, Colborne to Murray, April 11; C.O. 42/381, Maitland to Bathurst, July 16.



re-enter the field.<sup>72</sup> The Episcopal Methodists, foreseeing a renewal of the strife which characterized the period from 1815 to 1820, took immediate steps to bring about a union of the two societies, and in October, 1833, they were finally successful, with important results for Upper Canada.<sup>73</sup> Although no express stipulation was embodied in the articles of union, it is probable that the union was accomplished by an agreement on the part of Egerton Ryerson that politics should be eliminated from the pages of the *Christian Guardian*.<sup>74</sup> Certainly this result followed, and the reform party was deprived of its most powerful exponent. The Canadian Methodists still nominally refused to accept financial assistance from the government, but through the British Wesleyans they received several grants for missions.<sup>75</sup>

As for the Church of England, the bill authorizing the sale of the clergy reserves resulted in the acquisition, within the province, of a permanent revenue, which, though small at first, increased steadily. This was the more necessary as the Treasury decided in November, 1831, to withdraw gradually its annual grant for Canada to the Society for the Propagation of the Gospel. By 1834 the salaries of the clergy of Upper Canada had been entirely transferred to the provincial revenues.<sup>76</sup> To meet this expense the funds from the clergy reserves were utilized as far as they would go, but throughout the period they proved inadequate, and the deficit was met from the casual and territorial revenue.<sup>77</sup> This laid the Church open to the criticism that it was not satisfied with one-seventh of the lands of the province but in addition received large grants from the ordinary revenue.<sup>78</sup> As late as 1837, although

<sup>72</sup> Ryerson, *Story of My Life*, p. 121; Finlay and Holdsworth, *op. cit.*, vol. I, pp. 423-7. The Wesleyans had left the province in 1820. See above, p. 86.

<sup>73</sup> *Ibid.*

<sup>74</sup> Wesleyan Missionary Society, Incoming Letters, Canada, vol. IX. Simpson to Headquarters, Dec. 31.

<sup>75</sup> *Journals of Assembly*, append., 1836, vol. III. Report of Select Committee on Religious Grants; *Seventh Report*, append. 53; C.O. 42/439, Head to Glenelg, Nov. 30. C.O. 43/45, Glenelg to Head, April 15.

<sup>76</sup> *Canadian Archives Report*, 1900, Lower Canada, Campbell to Hay, Nov. 3, 1833; Stewart to Hay, May 15, 1834. C.O. 43/44, Rice to Colborne, Aug. 5, 1834.

<sup>77</sup> C.O. 42/414, Colborne to Goderich, Jan. 16, 1833.

<sup>78</sup> C.O. 42/437, Head to Glenelg, April 24, 1837.

393,746 acres of reserves had been sold,<sup>79</sup> the Church was still drawing 7711*l.* a year from the crown revenues.<sup>80</sup>

There remains for discussion only one further aspect of the controversy. As early as 1818 Lord Bathurst, at the instance of Strachan and the Bishop of Quebec, sent word to the governor that he should take legal means to constitute and erect parishes and rectories in each township, according to the act of 1791.<sup>81</sup> This was not practicable in the then unimproved state of the province, but, as rectories were needed, they were gradually established on glebe lots. Maitland in 1825 wrote to Bathurst that he was very anxious to put the Church on its proper footing. He requested royal instructions for the endowment of rectories from the clergy reserves.<sup>82</sup> These Bathurst sent on July 22, 1825.<sup>83</sup> The council could not, however, agree on the amount of the endowment, and the clergy funds were still inadequate for erecting many parsonages, so that no further steps were taken under Maitland. On November 21, 1831, Goderich wrote a private letter to Colborne informing him that the grant to the Society for the Propagation of the Gospel was to be discontinued, and that the province would soon be compelled to call upon its own resources to support the clergy. He outlined a plan which he thought might later be embodied in an official despatch. This was that two parishes should be erected in every township, each parish to be endowed with a glebe of reserves varying from one to three hundred acres.<sup>84</sup> In another private letter dated April 5, 1832,<sup>85</sup> Goderich discussed his plan in greater detail. The clergy corporation<sup>86</sup> added its plea in a series of resolutions of February 4, 1835, "that immediate steps may be taken to appropriate, as an endowment to every mission or parish now constituted within this province, such portion of the clergy reserves or glebes within, or as near to the same as may be deemed expedient, preparatory to the induction of the resident clergymen."<sup>87</sup> Colborne evidently considered that he had

<sup>79</sup> *Ibid.*

<sup>80</sup> *A. & P.*, 1839, XXXIV. Annual Report of Payments to Churches.

<sup>81</sup> C.O. 43/41, Bathurst to Smith, April 2.

<sup>82</sup> C.O. 42/375, Maitland to Bathurst, April 22.

<sup>83</sup> C.O. 42/375.

<sup>84</sup> C.O. 43/41.

<sup>85</sup> C.O. 42/411, enclosed in Colborne to Goderich, Nov. 21, 1831.

<sup>86</sup> See above, p. 87.

<sup>87</sup> C.O. 42/439, enclosed in Head to Glenelg, Oct. 18, 1837.



received sufficient authority to take up the matter with his council. Delay occurred over a difference of opinion concerning the jurisdiction of the rectors, the governor and attorney-general being of opinion that it should be confined to the limits of the churchyard, whereas the executive council and the solicitor-general claimed that it extended over the whole parish as in England. When Colborne had received his recall, the councillors, rather than risk the endowment with a new governor, waived their objections, and on February 5, 1836, Colborne completed the patents for endowing fifty-seven rectories with 27,049 acres of clergy reserves.<sup>88</sup>

The news of the endowment fell like a bombshell in Upper Canada. All the previous arrangements had been kept secret, and there seems to have been no intimation that the endowment was even contemplated. Since Goderich had just delegated power to settle the reserves to the local legislature, this body considered the endowment an insidious breach of promise, as it placed part of the reserves beyond its disposal. Sir Francis Bond Head, who succeeded Colborne, complained that the rectory question was one of the greatest difficulties with which he had to contend.<sup>89</sup> The most conservative of Upper Canadian assemblies "unequivocally condemned such a proceeding,"<sup>90</sup> and the Church of Scotland sent a certain William Morris to England on a mission of protest.<sup>91</sup>

The news of the endowment did not reach the Colonial Office for some time. Nearly a year afterwards Lord Glenelg, then colonial secretary, wrote to Head asking for an explanation of a list of patents which he had seen appended to some papers of the assembly.<sup>92</sup> When Morris arrived, the Colonial Office assured him that the rectories had been established without its knowledge or authority,<sup>93</sup> and the legality of the

<sup>88</sup> C.O. 42/431, Head to Glenelg, Dec. 17; Report of Committee of Assembly on the Clergy Reserve Sale Bill; C.O. 42/439, Head to Glenelg, Oct. 18. Only 44 out of the 57 patents were actually signed. See Hincks, *Religious Endowments in Canada*, p. 13.

<sup>89</sup> C.O. 42/431, Head to Glenelg, Dec. 17.

<sup>90</sup> *Journals*, Feb. 9, 1837.

<sup>91</sup> C.O. 42/439, Morris Correspondence; C.O. 42/444, Head to Glenelg, Jan. 24.

<sup>92</sup> C.O. 43/46, Glenelg to Head, Aug. 31, 1836. But Colborne, in a despatch of Feb. 26, 1835 (C.O. 42/425) had stated that "arrangements had been made for endowing each missionary station with a glebe of 3 or 400 acres of land." Changes in the Colonial Office probably led to official ignorance of this communication.

<sup>93</sup> *Ibid.*

endowment was referred to the crown officers. Since the patents quoted Goderich's private letter of April 5, 1832, as their authority, the endowment was pronounced invalid.<sup>94</sup> This decision was sent to Canada with a despatch asking the governor to investigate whether further authority for establishment could be adduced before the illegality of the rectories was publicly proclaimed. Strachan was appealed to and produced the royal instructions sent by Bathurst in April, 1825. With this evidence the law officers revised their opinion and pronounced the rectories valid.<sup>95</sup> A long interval took place, however, between the two decisions, during which Morris made known in Upper Canada the first decision that the rectories were illegal, and the opponents of the Church indulged in premature triumph. This was the state of affairs when the rebellion thrust all other issues into the background.<sup>96</sup>

Such are the data with regard to this much disputed question. The sole responsibility for the endowment of the rectories can with no more fairness be attributed to Sir John Colborne than to Lord Goderich, who was privately advocating such action, and to the clergy corporation, whose strongest efforts were directed to that end.

The clergy reserves question, with all its ramifications, forms one of the most painful chapters of Canadian history. The sordid details of the long quarrel are the more discouraging because they arose from a conflict of lofty principles. As such the struggle was but an aspect of the divergence of religious ideals which had created discord between England and her colonies since the days of the Pilgrim Fathers. Set aside for the purpose of establishing a church which would cement the loyalty of Upper Canadians, the clergy reserves were a chief cause of political unrest. Many witnesses can be cited on this point. Perhaps the most weighty testimony is that of a later governor, Poulett Thomson (Lord Sydenham). He wrote to Lord John Russell in 1840 as follows :

" There is no subject of such vital importance to the peace and tranquillity of this province as the question of the clergy reserves ; there is none, with reference to the future union of the two provinces, which it is more necessary to determine

<sup>94</sup> C.O. 43/46, Glenelg to Head, June 6, 1838.

<sup>95</sup> C.O. 43/47, Glenelg to Arthur, Feb. 9, 1838.

<sup>96</sup> C.O. 42/439, Head to Glenelg, Nov. 27, Morris Correspondence.



without delay. The records of the Colonial Office will afford ample evidence of the fatal effect upon public affairs in Upper Canada of the state in which this matter has for some years rested. But no one who has not had the opportunity of examining on the spot the working of this question can correctly estimate its importance. It has been, for many years, the source of all the troubles in the province; the never-failing watchword at the hustings; the perpetual spring of discord, strife and hatred."<sup>97</sup>

<sup>97</sup> *A. & P.*, 1840, XXXII, Thomson to Russell, Jan. 22, 1840.

*Note.*—Petitions setting forth the arguments of the various churches concerning the reserves are so numerous that they have not been enumerated in the foot-notes. They are to be found in almost every volume of the state papers from 1823 onward.

## CHAPTER VII

### THE ADMINISTRATION OF SIR PEREGRINE MAITLAND, 1818-1828

THE financial difficulties with Lower Canada, the alien question, the clergy reserves and the university were the most important causes of acute divergence of opinion in Upper Canada during the ten years which succeeded the departure of Gourlay in 1819. But to dismiss this period with no further discussion would be to ignore the personal element in politics, which in Upper Canada probably transcended everything else in importance. The character and opinions of Sir Peregrine Maitland, who became governor in June, 1818, and who held office until transferred to Nova Scotia in November, 1828, had a profound influence upon events in the colony. Like most colonial governors of the time, Maitland was a professional soldier, who had been engaged in active service from the age of fifteen. His wife, Lady Sarah Lennox, was the daughter of the Duke of Richmond, and when the Duke was sent to Lower Canada as governor-in-chief, Sir Peregrine Maitland, fresh from Waterloo and the occupation of Paris, went with him as lieutenant-governor of the upper province.<sup>1</sup> In 1818 Maitland was forty-three years old, a major-general and K.C.B. This was his first civilian appointment.

"Sir Peregrine," wrote John Strachan,<sup>2</sup> "is a most amiable and pious man, and comes out most anxious to do all the good he can. He arrived here with some ideas respecting the executive government not founded on sufficient evidence; but he now sees things more clearly. He is a man of great talent and much simplicity of manner and habit; at the same time he is firm and resolute. . . . Accustomed to the promptness of military command, he has been sometimes a little hasty in

<sup>1</sup> *D.N.B.*

<sup>2</sup> Bethune, *op. cit.*, p. 73.



taking steps which had been usually the result of consultation ; but this has been entirely from inadvertence, and not from any desire to assume extraordinary power. He is yet new in civil matters, but his diligence is incessant, and in a short time he will be completely master of them. His great anxiety to look into everything injures his health, which is extremely delicate. He keeps much to himself, has no particular adviser and inquires and thinks and decides for himself."

Few Canadians could be so enthusiastic, for Maitland soon proved himself a tory of the old school. Reserved, ceremonious and dignified, he was judged by Canadians to be haughty and imperious. With high ideals of the mission of the church and the monarchy, he was without hesitation dubbed a bigot in Canada. He had a soldier's idea of discipline and authority, and his language and bearing were resented by civilians. Being ignorant of his responsibilities in his entirely new surroundings, he lent himself to the views of the official advisers whom he found in power on his arrival. Maitland never understood the Canadians. In his official despatches his military hauteur expressed itself most clearly. He spoke of the popular leaders in contemptuous terms as tradesmen, brewers, sons of criminals, etc., and to him it was inconceivable that a man could be entitled to political influence unless he was a "gentleman." For the members of the assembly he never concealed his contempt, and he was wont to scold them in sharp terms whenever they incurred his displeasure. The history of his administration is one of petty, personal warfare in which, year by year, the ranks of his opponents increased in numbers and vehemence.

He began his administration by suppressing Gourlay's conventions, dismissing Gourlay's supporters and excluding them from land grants. His promptitude of decision had its temporary results, and he enjoyed comparative peace until the election of 1824 began to reveal his unpopularity. During this time he urged upon the Colonial Office the necessity of increasing the strength of the Church and of establishing Church schools. He felt that the prosperity of the colony depended on preserving intact the crown reserves as a source of revenue independent of the people, and to this end he approved of the formation of the Canada Company. He

introduced the innovation of submitting for the inspection of the assembly only those accounts for which it voted the money. His policy, in fact, was a rigid adherence to certain autocratic principles which he believed essential to monarchy. He was convinced that "concessions to colonial legislatures, for the mere purpose of conciliation, only leads to more inadmissible claims, and that nothing tends so much to the respectability of the government, as a firm adherence to certain leading principles and to usages long held to be settled." Fearful lest the crown might be induced to abandon some part of its revenues, he wrote home that "from the period of such an abandonment would be dated the beginning of a dependence on the colonial assembly destructive of the public peace, of the honour and character of the public service, and of the necessary energy of the executive government and of all actual resemblance to the constitution of the mother country."<sup>3</sup> To increase the authority of the crown he received permission to expend annually two or three hundred pounds on secret service and on subsidizing the press,<sup>4</sup> and complaints were frequent during his administration that he resorted to espionage, with what justice it is difficult to say.<sup>5</sup>

Even on non-contentious subjects Maitland was not particularly zealous for the prosperity of the colony. Perhaps his most useful work was in relation to the disposal of land. In one of his earliest letters to the Colonial Office he attributed the discontent aroused by Gourlay to the indiscriminate granting of land to non-residents,<sup>6</sup> and in the face of much opposition he pressed upon the colony and the Colonial Office a new remedial policy. The land regulations of 1818 restricted free grants and required the performance of settlement duties.<sup>7</sup> In 1819, at Maitland's instigation, the legislature passed a law extending the local assessments to unoccupied lands. As the duration of the act was confined to eight years, it had little effect, for the landlords expected it to be repealed before action by distress was taken against them. This difficulty had become clear by 1824, and Maitland proposed that the law be made

<sup>3</sup> C.O. 42/381, Maitland to Huskisson, Dec. 15, 1827.

<sup>4</sup> C.O. 42/362, Memorandum.

<sup>5</sup> *Blackwood's Magazine*, September, 1827, article on Upper Canada.

<sup>6</sup> C.O. 42/361, Maitland to Bathurst, Dec. 8; C.O. 42/362, May 15.

<sup>7</sup> C.O. 42/361, Maitland to Bathurst, Dec. 10.



permanent, and that after eight years the land be sold to meet arrears of taxes. This proposal was eagerly taken up by the assembly, but it was expected that the bill would be thrown out by the landlords in the legislative council. At this point Maitland summoned the members of the executive council and informed them that, since the governor and the people were agreed on the utility of the measure, it behoved them as officials to give their consent. In consequence of this injunction, the official members of the council withdrew their opposition, and the bill passed. In the hope that it might be disallowed in England, the chief justice and two leading landowners of the legislative council began a strenuous opposition, in the course of which they made public the fact that the bill had been carried by Maitland's personal interference. The assembly, ever ready to pursue any complaint against the governor, appointed a select committee on the subject in 1828, which reported "facts of a painful and alarming nature" concerning the legislative council.<sup>8</sup> This is a peculiar case, illustrating as it does that the assembly would go to the extreme of opposing a popular measure because it had been advocated by the governor. Maitland's conduct, though censured by the Colonial Office, ought to be judged leniently. So long as members of the executive council were also members of the legislative council, it was vain to pretend that they could be independent legislators, and executive influence expended in a popular cause might well have been allowed to pass uncensured. Maitland's position was not that of a sovereign standing aloof from party opinions, so that the analogy to the interference of George III in the House of Lords did not hold good. Sales of land by the sheriffs for arrears of taxes became common after 1828, and, though they caused much discontent, the policy can scarcely be impeached.

Unfortunately Maitland was not usually so independent. The only people of the colony whom he considered respectable belonged to the official clique at York, and all of his appointments were made from that class. However untrue charges against the exclusiveness of the local oligarchy became after 1828, before that date they were but too well justified. It was

<sup>8</sup> C.O. 42/383, Maitland to Huskisson, March 31, 1824; C.O. 42/372, Maitland to Bathurst, Feb. 6, 1824.

toward the close of his administration that complaints of "family influence," "family juntos," etc., became frequent.<sup>9</sup> The invidious social distinctions insisted upon by Maitland provided a fertile field for the agitation of a new demagogue, a worthy successor of Gourlay.

William Lyon Mackenzie is a prominent figure in Canadian history. The notoriety which he naturally acquired as leader of a rebellion in 1837 has stamped his importance on the minds of posterity. Moreover, Mackenzie was the type of man who thirsts for publicity, and who pushes himself forward on every possible occasion. An incessant writer, he has left ample evidence of his multifarious activities. As a result he has been accorded a pre-eminence in the period prior to 1837 which needs qualification. The name of Gourlay is attached to the agitation against the land policy, that of the Bidwells to the alien question, that of Egerton Ryerson to the clergy reserves, that of the Baldwins to responsible government, but Mackenzie never succeeded in taking the leadership on any prominent issue. Nor had he throughout life a decided policy. At any one moment from 1820 to 1837 his writings were but the reflection of the miscellaneous complaints which happened to be prevalent. Before 1828 he was known only as the obscure editor of one of several radical newspapers, and it is doubtful whether he possessed any greater local reputation than Francis Collins,<sup>10</sup> the editor of a similar paper. In 1828 he entered the assembly and made himself conspicuous as an agitator, but it was Marshall Spring Bidwell, not Mackenzie, who was elected speaker by the reformers, both in 1828 and 1835, and the speakership was then the only official position of party eminence attainable. Whenever in Lower Canada the officials referred to the reformers, they spoke of Louis Joseph Papineau as their leader, but in Upper Canada they spoke of Bidwell. Bidwell's ability as a lawyer and a politician was universally acknowledged, and as an opponent he was respected, whereas Mackenzie was regarded merely as a troublesome agitator and a demagogue. But Bidwell was a man of a retiring disposition and more moderate views, and, as he left Canada in 1837, it has been the fashion to depreciate his importance and to

<sup>9</sup> For example, C.O. 42/387, Smith to Colonial Secretary, April 26, 1828.

<sup>10</sup> See below, p. 114.



accord to Mackenzie the combined rôle of leader of the reformers and leader of the rebels. This attitude is not only unjust, it is also misleading. Mackenzie was not a thinker but a fighter. His task was to popularize other people's ideas. The only originality which he ever exhibited was a certain critical ability in finance, his destructive criticism of the banking system, the post office and the Welland Canal exhibiting some skill. As an agitator, however, and a scathing opponent of the existing government, root and branch, his energy after 1828 was indefatigable and his influence pre-eminent. Perhaps the kindest contemporary tribute to his memory was recorded by Egerton Ryerson as follows :

" With a Scotchman's idea of justice and freedom, he felt a longing desire to right the wrongs which he saw everywhere around him. This, therefore, constituted, as he believed, his mission as a public man in Canada and it furnishes the key to his life and character.

" Mr. Mackenzie was a political pessimist. He looked upon every abuse which he attacked, with a somewhat severe, if not a prejudiced eye. Every evil which he discerned was in his estimation truly an evil, and all evils were about of equal magnitude. Besides, in attacking an evil, or an abuse, he did not fail to attack the perpetrator or upholder of it also, and that too, with a strength of invective, or a cutting sarcasm, which brought every foible and weakness of his, and even those of his father before him, vividly into view. This was the baneful secret of his strength as an assailant ; but this, too, caused him to be regarded by his victims with intense dislike, bordering on hatred. This style of attack, on the part of Mr. Mackenzie, did not necessarily arise from anything like vindictiveness, but rather from a keen sense of dislike to what he conceived to be wrong in anything he was attacking.

" No man was more unselfish than Mr. Mackenzie. He would rather suffer hardship than accept a doubtful favour. Even in regard to kindly and reasonable offers of help, he was morbidly sensitive, and yet looking at the conduct of many men in like circumstances, he deserved commendation, rather than censure, for his extreme conscientiousness."<sup>11</sup>

<sup>11</sup> *Story of My Life*, pp. 186-7. For a highly idealized portrait of Mackenzie see Lindsey, *Wm. Lyon Mackenzie*, chap. I.

Mackenzie was born of humble parentage in Dundee in 1795. At an early age he left school to serve in local shops, and at nineteen he set up a general shop for himself at Dundee. In April, 1820, he sailed for Canada, where he established himself as a shopkeeper. By 1824 popular complaint against Maitland's exclusive system of government was strong enough to return a large number of government opponents to the assembly, and doubtless the same pressure induced Mackenzie to set up as the printer of a new journal, the *Colonial Advocate*, to be published weekly at Queenston.<sup>12</sup> His office was removed to York later in the same year. The governor refused to pay Mackenzie for publishing the debates of the assembly, and to gain a reputation Mackenzie distributed thousands of his papers gratuitously. Newspaper editors were compelled to pay heavy duties on paper and to pay postage in advance, so that Mackenzie's paper did not prosper and did not appear regularly. Mackenzie was, in fact, on the verge of bankruptcy when, on June 8, 1826, occurred the episode which laid the foundation of his material prosperity and of his political fame.<sup>13</sup> In 1817 a duel had taken place between the son of William Jarvis, provincial secretary, and the son of Ridout, the surveyor-general, in which young Ridout had been killed. Jarvis was tried for manslaughter and was acquitted, but Mackenzie, ever anxious to attack any member of the executive, taunted him, through the press, as a murderer. This and other libels against members of the executive provoked exasperation, and while Mackenzie was absent from York Jarvis organized a body of very young men, sons of officials and clerks in the government offices, who invaded Mackenzie's offices, scattered his types and threw some of them into the bay.<sup>14</sup> The radical newspapers made the most of this opportunity to attack the government. They published the story with embellishments and insinuated that the whole affair was a tory plot to ruin Mackenzie.<sup>15</sup> The conservative press gave colour to the contention by defending the outrage. Maitland dismissed one of the offenders, who was a clerk in the government offices,

<sup>12</sup> Lindsey, *Life and Times of Wm. Lyon Mackenzie*, vol. I, chap. I.

<sup>13</sup> *Ibid.*, p. 121.

<sup>14</sup> Jarvis, *Statement of the Facts Relating to the Trespass on the Printing Press of Wm. Lyon Mackenzie*, York, 1828. *Life and Times of Wm. Lyon Mackenzie*, vol. I, pp. 78-84.

<sup>15</sup> *Upper Canada Herald*, June 20, 1826.



but soon reappointed him to another remunerative office, and it was plain enough where the sympathies of the executive lay. Mackenzie sued for two thousand pounds as damages. Bidwell was employed as his counsel, and the jury awarded six hundred and twenty-five pounds. This was paid by voluntary subscription, and Mackenzie emerged from the affair with improved finances and popular fame.<sup>16</sup>

In the session of 1827, when the attack of Mackenzie was engaging the attention of the assembly, another incident of a different character aroused indignation. Captain Matthews, an army officer who, after twenty-seven years' service, had retired on a pension, was a member of the radical opposition in the assembly of 1824-8. In the session of 1827 he applied for leave of absence in order to proceed to England to answer a charge made against him. This charge was to the effect that, when attending a play given by an American company at the York theatre, Matthews had called for "Hail Columbia" and "Yankee Doodle" and had urged the audience, among whom were sixteen or eighteen members of the assembly, to remove their hats during the performance. A report of the incident as published in the newspapers was forwarded by the governor of Lower Canada to Lord Bathurst, who transmitted it to the Board of Ordnance. The latter sent Matthews an order to proceed to England to justify his conduct, and meanwhile suspended his pension. This order reached Upper Canada when feeling was most acute over the alien question, and the assembly was furious at the attack upon one of its members. A committee called numerous witnesses, who gave unanimous testimony that the affair had no sinister significance, and was a mere incident of a jovial and convivial occasion. "God Save the King" and "Rule Britannia" had also been called for, and the American songs were sung merely as a tribute to the American players. No doubt the story, as reported to the Board of Ordnance, had been perverted by transmission through the vindictive tory press, and in fact Matthews was ultimately exonerated. But the affair caused him great financial distress and personal inconvenience, and, as it removed from the assembly one of its most active members, it was cherished by the people as an example of official tyranny. An

<sup>16</sup> *Upper Canada Herald*, June 5, 1827.

address to the king was passed in 1828, and a bill was sent to the council for the relief of Captain Matthews, which of course failed to run the gauntlet of that house.<sup>17</sup>

Sir Peregrine Maitland was personally responsible for a third incident which roused public resentment. In 1821 a certain Mr. Forsyth had purchased property adjoining Niagara Falls. The government had previously reserved for military purposes a strip of this land, one chain in width, on the banks of the Niagara river. In 1827 Forsyth inclosed his property, including the strip of military reserve, with a high board fence which excluded the public from a view of the falls unless they paid Forsyth for the privilege. Complaint was made to Maitland, who ordered Forsyth to remove the fence. On his refusal, Maitland sent Captain Phillpots with a small detachment of troops to dispossess Forsyth. After their departure Forsyth proceeded to rebuild the fence, upon which the attorney-general filed an information of intrusion against him, and a verdict was pronounced for the crown. Meantime, the fence was again torn down, and Forsyth brought an action of trespass against the troops who had destroyed it. As some hitch occurred in the legal procedure he petitioned the assembly, who referred his case to a select committee. This committee called witnesses, including two men, Givens and Coffin, who held government appointments. Maitland ordered these men not to attend the summons of the committee on the plea that he had not been previously informed of the ground of summons. Givens and Coffin obeyed the governor, and were forthwith imprisoned by the assembly for contempt.<sup>18</sup> The committee of the assembly reported that military procedure against Forsyth had been "a daring outrage against the peace of the community," and that one of the privileges of the assembly was to compel the attendance of any persons whatever as witnesses.<sup>19</sup> When the account of the case reached the Colonial Office, Sir George Murray pronounced against Maitland's conduct on every particular. His employment of military instead of civil action against Forsyth was unwarranted, and his refusal to allow government officials to appear before the

<sup>17</sup> *Upper Canada Herald*, Report of Committee of the Assembly on the Case of Capt. Matthews, Feb. 13, 1827; *Journals*, March 24, 1828.

<sup>18</sup> C.O. 42/383, Maitland to Huskisson, March 29, 1829.

<sup>19</sup> C.O. 42/384, Report of Select Committee on Forsyth's Petition.



assembly was without precedent.<sup>20</sup> This was the greatest blunder that Maitland's military outlook and zeal for the prerogative induced him to commit. Unfortunately, the case did not escape further attention. Later, in 1832, Forsyth petitioned the Colonial Office for damages; the House of Commons called for papers on the subject, and Colborne, then governor, was instructed to carry out the wishes of the assembly if it persisted in pressing them.<sup>21</sup> Meanwhile Forsyth sold his property, and the new owners obtained a verdict of trespass against the government. In 1835 the assembly revived all the details of the affair and petitioned the king for compensation to Forsyth.<sup>22</sup>

The feeling aroused by these various incidents, or "outrages" as they were popularly called, must be taken into account in judging a much more serious and complicated affair which took place in the spring of 1828. The extraordinary impression made upon the colony by John Walpole Willis in his short residence of nine months has no parallel, except possibly that of Gourlay ten years earlier. At various times since 1792 the Colonial Office had considered the expediency of appointing a judge in equity for Upper Canada. In April, 1827, Bathurst wrote to Maitland that the rapid growth of the colony necessitated an increase in its judicial establishment, and that it was a subject worthy of consideration whether a vice-chancellorship might be created and committed either to the chief justice or to one of the judges of the King's Bench. Pending the receipt of Maitland's opinion Bathurst appointed John Walpole Willis, an equity lawyer and writer of some note,<sup>23</sup> as a puisne judge of Upper Canada.<sup>24</sup> The intention was to confer upon Willis the additional post of equity judge, and he arrived in Canada in September, 1827, with an introduction to that effect.<sup>25</sup> The cause of delay in the appointment as judge in equity was a legal question whether a new judge could be appointed under sign manual, or whether an act of the

<sup>20</sup> C.O. 42/387, Stephen to Hay, Oct. 15; C.O. 43/42, Murray to Maitland, Oct. 20, 1828.

<sup>21</sup> C.O. 42/416, Address of Commons, Feb. 6.

<sup>22</sup> *Seventh Report on Grievances*, append. on Forsyth.

<sup>23</sup> *D.N.B.*

<sup>24</sup> C.O. 43/42, Notice of appointment.

<sup>25</sup> C.O. 43/42, Goderich to Maitland, July 19.

provincial parliament was necessary.<sup>26</sup> Willis later claimed that his salary as equity judge had been promised him from the time of his arrival, and that this was the reason why he accepted the appointment in place of a more highly paid post at the Cape of Good Hope.<sup>27</sup>

On his arrival in Canada, Willis pursued an unusual course. He informed the governor that there was doubt whether an equity judgeship could be created without an act of the local legislature, and he consulted the attorney-general and others about drafting such a bill. The necessity for this step was corroborated by the arrival of a despatch from Huskisson.<sup>28</sup> This despatch, with a series of resolutions in favour of the establishment of a court of equity, was laid by Attorney-General Robinson before the assembly. The reformers in the assembly refused to consider the question until an actual bill was presented, and Robinson entrusted a draft to John Rolph, who brought it before the assembly. Instead of proceeding with the bill Rolph carried resolutions to the effect that the measure should be dropped for the session, that the judges should hold office independent of the crown, and that the chief justice should not be an executive councillor.<sup>29</sup> Willis, instead of co-operating with Robinson as his interests dictated, supported the reformers in their opposition to Robinson's bill. The important question is how to explain Willis's conduct in discountenancing a measure so essential to his own prospects.

The explanation of this enigma seems to be in the local circumstances of Upper Canada. Campbell, the chief justice, was old and infirm, and in the spring of 1828 he went to England on leave of absence, with the intention of applying for permission to retire. Who should be his successor? John Beverley Robinson, the attorney-general, possessed the highest legal talent of any Canadian, and was marked out by Maitland and his advisers as the legitimate successor to the office. But Robinson was unpopular with the reformers, and Willis reasoned that he himself possessed qualifications superior to those of a provincial lawyer, and that, if the equity judgeship

<sup>26</sup> C.O. 43/42, Bathurst to Maitland, April 9, 1827.

<sup>27</sup> C.O. 42/386, Willis to Huskisson, April 21.

<sup>28</sup> C.O. 43/42, Nov. 25, 1827.

<sup>29</sup> C.O. 42/385, Robinson to Hillier, May 12; C.O. 42/386, Judge Willis's Appeal.



failed to materialize, he had stronger claims upon the government for the post than any other candidate.<sup>30</sup>

The rivalry between Willis and Robinson led to mutual antipathy. The provincial oligarchy, of long standing and local prestige, objected to the presence in their midst of an outsider of equal pretensions. Willis was haughty and imperious and chose to dictate to the members of the provincial bar how they should interpret the law, a very tactless procedure. Robinson, too, was accustomed to universal deference, and received with ill favour proposals which he himself did not originate. Lady Sarah Maitland, as daughter of the Duke of Richmond, had enjoyed the distinction of being the only lady of noble birth in the province until the arrival of Lady Mary Willis, daughter of the Earl of Strathmore, brought a challenge to her social supremacy. Such considerations as these had an important political effect. Meeting with social and professional jealousy among the officials of York, Willis was driven to cultivate the society of such men as Dr. W. W. Baldwin, a wealthy Irishman from Cork, who had settled in the province thirty years before and was well known for his liberal views in politics, John Galt, the poet and novelist, and founder of the Canada Company, who had never been on good terms with Maitland, Thomson, the editor of the *Upper Canada Herald* and liberal representative for Kingston, John Rolph and the Bidwells. As these men were prominent politicians, Willis subscribed to the radical newspapers and was wont to frequent the lobbies of the assembly to consult with his new friends. He could not have demeaned himself more effectively in the eyes of the executive<sup>31</sup> even had his conduct been otherwise discreet, but after a short time it appeared that he was incapable of preserving the dignity which belongs to a judge, in the face of an overwhelming temptation to play the rôle of champion of popular rights against the common foe. Only on this assumption is his conduct in the spring of 1828 capable of an explanation.

The first open quarrel occurred over the duties of the attorney-general, who was prosecuting Francis Collins for libel

<sup>30</sup> C.O. 42/386, Willis to Huskisson, April 21; C.O. 42/384, Maitland to Huskisson, May 14 and 15.

<sup>31</sup> C.O. 42/386, Narrative of Occurrences in Upper Canada, Dec. 5, 1828; C.O. 42/385, Maitland to Huskisson, July 6, 1828.

on several charges. Collins, a turbulent Irishman,<sup>32</sup> was the editor of the *Canadian Freeman*. A year after the attack on Mackenzie's press he had renewed the charge against Jarvis as a murderer. In the interests of the public peace Robinson brought a bill of libel against him. Shortly afterwards Robinson brought in another libel of Collins against the governor, and one against the grand jury who had found a true bill against Collins for his first libel. Collins was to be tried before Willis as puisne judge. Instead of defending himself, he arose in court and attacked the attorney-general for "gross and foul partiality and oppression" in prosecuting him, while at the same time failing to prosecute the solicitor-general, who had acted as second in the duel of 1817, and also the persons who had attacked Mackenzie's press. These had been tried for civil damages but, at Mackenzie's request, a criminal prosecution had not been instituted. It is obvious that both these charges against the attorney-general were a mere pretext for disturbance, and Collins's conduct was patently irregular. Robinson asked Willis to call the court to order. Instead, Willis turned upon Robinson and accused him of having failed to perform his duty as public prosecutor. Robinson replied that except where the government was concerned he never proceeded to prosecute unless an information had been laid in his hands. But in deference to Willis the two trials urged by Collins were conducted. The solicitor-general was acquitted, and the Mackenzie rioters were each fined five shillings.<sup>33</sup>

Willis, having compelled the trial of these two charges as a part of the duties of the attorney-general, next proceeded to urge Robinson to drop the prosecutions against Collins for libel. Robinson was naturally indignant, but he agreed to suspend proceedings so long as Collins behaved himself.

Meantime, in the absence of the chief justice, Willis and the other puisne judge, Sherwood, were compelled to constitute the court alone. In the Easter term they found themselves in disagreement on most cases. The conservative press did not hesitate to attribute this discord to the political opinions of the two judges.<sup>34</sup> As the situation was awkward, Willis

<sup>32</sup> For a sketch of Collins's career see Lindsey, *Life and Times of Wm. Lyon Mackenzie*, vol. I, p. 112.

<sup>33</sup> C.O. 42/385, Robinson to Maitland, May 10, enclosure. *Ibid.*, May 20.

<sup>34</sup> C.O. 42/386, Narrative of Occurrences in Upper Canada.



was led to investigate the constitution of the court of King's Bench, and he came to the conclusion that the wording of the provincial act, 34 Geo. III, cap. II, was such as to require the presence of the chief justice and both puisne judges in order to constitute a legal court. The opinion he expounded in great detail in two letters which on June 6 he handed to Maitland to forward to the Colonial Office.<sup>35</sup>

On June 16, he arose in open court and argued in a long speech that the present sitting was illegal. Confronted with this contention Sherwood adjourned the court, and when it resumed the next day Baldwin and Rolph took off their gowns in the presence of the court as a protest against its validity. The opinion of the attorney- and solicitor-general was taken, and was unfavourable to Willis's views. Willis declined to defend his position further, and on June 26 Maitland removed him from the bench.<sup>36</sup>

His removal cannot be considered arbitrary. Since the foundation of the province on many occasions two judges and sometimes even a single judge had presided over the sitting of the King's Bench, and if Willis's contention had been correct, most of the legal procedure of the province would have been invalidated.<sup>37</sup> To make such an announcement in court in a manner to hold up all further action was an act of contumacy without parallel. As a matter of fact Willis failed to gain any converts to his point of view, except the reformers of Upper Canada, who were inspired by political motives. The Colonial Office confirmed his dismissal, and the Privy Council rejected his contentions.<sup>38</sup>

Unfortunately the people of Upper Canada had little understanding of the legal questions involved in the decision. The tenure of judicial office in Upper Canada was during pleasure only, and this had already been paraded as a grievance in the sessions of 1826 and 1827. The prerogative of dismissal involved had, however, seldom been utilized. Since the dismissal of Judge Thorpe in 1807 the judges had been allowed to prosecute their duties undisturbed. As early as December 15, 1827, Maitland seems to have contemplated the possibility

<sup>35</sup> C.O. 42/385, Maitland to Huskisson, June 6.

<sup>36</sup> *Ibid.*

<sup>37</sup> A list of cases is contained in C.O. 42/385.

<sup>38</sup> C.O. 42/386. The whole volume is devoted to the appeal.

of dismissing Willis, for in a despatch of that date he reported against the system adopted in the Cape of Good Hope, whereby the judges held office independent of the governor. He argued that judges sent out to a colony were as yet untried and of little reputation at home, and if they chose to side with the assembly against the governor, they might become very dangerous.<sup>39</sup> Unaware of these considerations, the radicals seized upon Willis's dismissal as another instance of official tyranny. A quotation from the *Upper Canada Herald* summed up the popular point of view.

"The opinion advanced by Mr. Willis appears to be the result of deep research and great deliberation, but unfortunately it does not accord with the views of the provincial executive, and therefore the learned gentleman has been dismissed from office. This high-handed measure plainly shows that judges who hold their appointments during pleasure may not give an opinion contrary to the will of the executive, without running the risk of being dismissed."<sup>40</sup>

Willis at once became a popular hero. A public meeting was held at York on July 5, 1828, at which Dr. Baldwin was called to the chair. A resolution was passed to open a subscription for the purchase of plate to be presented to Willis, and a committee consisting of the two Baldwins and John Galt was appointed to watch over the interests of Lady Mary Willis after her husband's departure.<sup>41</sup> An elaborate petition was drawn up, embodying a formidable array of grievances, chiefly directed against the composition, powers and practice of the legislative and executive councils. The petition contained a request that henceforth all judges should be appointed from England from the ranks of the English bar. As ever, the radicals were appealing to the British government against the local oligarchy. The petition ended with a tirade against Sir Peregrine Maitland and a request for his recall.<sup>42</sup> Copies of this petition were sent to the king and to both houses of parliament, to Huskisson and to several radicals, including Joseph Hume and Sir James Mackintosh.<sup>43</sup>

<sup>39</sup> C.O. 42/381, Maitland to Huskisson, Dec. 15.

<sup>40</sup> Editorial, July 1, 1828.

<sup>41</sup> *Upper Canada Herald*, July 17; C.O. 42/386, Address to Willis.

<sup>42</sup> C.O. 42/386, Copy of Petition.

<sup>43</sup> C.O. 42/390, report enclosed in Baldwin to Wellington, Jan. 3, 1829.



As a whole Sir Peregrine Maitland's administration appears narrow-minded and tactless. It naturally led to increased disaffection. In 1825 Maitland had complained that his assembly contained a large number of new members little disposed to support the government,<sup>44</sup> for John Rolph, Bidwell and Peter Perry had begun their long careers of opposition at this time.<sup>45</sup> In 1826 the assembly had been even more obstreperous than usual. It had appointed a committee of grievances which forwarded seven addresses on the state of the province, commenting adversely on the exclusion of Americans, the withholding of land from the members of Gourlay's convention, the tenure of the judges, the presence of the chief justice in the executive council, the state of the post office, the clergy reserves and the alien question.<sup>46</sup> Maitland had also quarrelled with the assembly over the dismissal of Fothergill, the government printer, because of his radical opinions, and over certain items of contingencies which directed the governor to pay Collins, Mackenzie and another radical, Carey, for reporting the debates.<sup>47</sup> Acute discord over the alien question followed in 1827, and new claims were advanced by the assembly of 1828. Another quarrel ensued over the printing of the debates, and the assembly for the first time passed resolutions that the crown revenue, derived from duties levied in Lower Canada, should be at its disposal.<sup>48</sup>

Then came the elections of 1828. Since the last election in 1824, there had occurred the quarrel over the alien question, the publication of Strachan's ecclesiastical chart, and the issue of the new charter of the university. Late in June came the dismissal of Willis and in July the elections. The defeat of the government was overwhelming. Of all those who had sanctioned the alien bill, only the attorney-general and two others retained their seats. Never, wrote Maitland, had the province been so unquiet. "Men who, until lately, were wholly without influence on the public mind, whose principles were notoriously disloyal, and whose characters as individuals are really detestable, are now degrading the legislature of the

<sup>44</sup> C.O. 42/373, Maitland to Bathurst, April 20.

<sup>45</sup> For sketches of these men see Dent, *Story of the Rebellion*.

<sup>46</sup> C.O. 42/377, Maitland to Bathurst, March 7.

<sup>47</sup> C.O. 42/377, Maitland to Bathurst, March 10.

<sup>48</sup> *Journals*, Jan. 24, March 24, March 25.

country by their presence."<sup>49</sup> This was merely Maitland's way of damning his opponents, and the words cannot be taken at their face value, but the radical colour of the new house was unmistakable. All the old reformers were re-elected, reinforced by W. L. Mackenzie and Jesse Ketchum for York, William Warren Baldwin, Peter Shaver, Thomas Dalton, and other radicals of less note. It is interesting to notice that of this, the most radical of all Upper Canadian assemblies, four were native Irishmen, six Scotsmen, seven Englishmen, thirteen Canadians, three were born in other British colonies, and fifteen in the United States.<sup>50</sup> That discontent was by no means confined to the American element is evinced by the fact that the address in opposition to the speech from the throne was carried by thirty-seven to one.<sup>51</sup> Such was the legacy which Sir Peregrine Maitland bequeathed to his successor, Sir John Colborne, who replaced him as governor on November 4, 1828.

<sup>49</sup> C.O. 42/384, Maitland to Murray, Aug. 12.

<sup>50</sup> Merritt, *Biography of W. H. Merritt*, p. 117.

<sup>51</sup> *Journals*, Jan. 12.



## CHAPTER VIII

### THE AGITATION OF WILLIAM LYON MACKENZIE

SIR JOHN COLBORNE, like Maitland, was a professional soldier. He had entered the army at the age of sixteen and had served with distinction throughout the Napoleonic Wars. From 1821 to 1828 he had acted as lieutenant-governor of Guernsey, where he had distinguished himself by the restoration of Elizabeth College. In 1825 he was appointed lieutenant-governor of Upper Canada. With much the same antecedents as Maitland, and like him a tory governor appointed by a tory ministry, he was yet very different from his predecessor. His keen and independent intellect, his social urbanity and his zeal for the prosperity of the colony over which he governed, if insufficient to win for him the support of the radicals, at least prevented him from being a personal factor increasing political unrest.<sup>1</sup>

His first assembly lost no opportunity of attacking the government on every score. Marshall Spring Bidwell was elected speaker, and from that position of ascendancy led the debates of the house. The promotion of John Beverley Robinson, the attorney-general, to the chief justiceship, removed from the assembly the strongest supporter of the government, and in his place Robert Baldwin entered parliament in 1830 for the first time. The reformers consequently met with little opposition in their own house. It has been indicated above that the clergy reserves and university questions were very acute at this time. The assembly renewed its criticism of the previous administration. An address to the king was passed on the case of Willis, in which the attention of the crown was invoked "to the dependent and unsatisfactory state of the judiciary."<sup>2</sup> Demand was

<sup>1</sup> Colborne's biographer is G. C. M. Smith. See also *D.N.B.*

<sup>2</sup> C.O. 42/388, Colborne to Murray, April 4; *Journals*, March 14.

raised not only for accounts of the Canada Company and of the casual and territorial revenues, but also for control of the crown revenues, and of the land-granting department.<sup>3</sup> It was a matter of natural resentment that the crown revenues in 1828, 1829 and 1830 were more than sufficient to meet all the expenses of the government, so that the assembly could not take advantage of the power of the purse to extort concessions. Consequently, the assembly passed an elaborate address to the crown demanding control of the revenues raised at Quebec.<sup>4</sup> In 1830, in reply to the speech from the throne, the conviction was recorded "that the unqualified recognition of our constitutional right over all moneys raised in, or to and for, the uses of the province, can alone secure to us our due weight in the constitution and enable us to realize the many and earnest objects of public improvement without unnecessarily increasing the burdens of the people."<sup>5</sup>

In the session of 1829 the assembly took advantage of the absence of its chaplain, the Rev. Robert Addison, to assert the right to appoint all its own officers and to arrange that during the session the various clergymen of York should be called in to officiate in turn.<sup>6</sup> In the following session the assembly was even more decided. A resolution was passed that "this house regard the assumption by the executive government, to appoint a chaplain for them of the Church of England, even without previous reference to them for the expression of their feelings and wishes on the subject, as part of a system conducive to the extension and perpetuation of this injurious and alarming policy" of executive control and religious exclusiveness. It was left to the assembly of 1831 to rescind the order which required the house to be opened each morning with prayer. The chaplain, however, continued to receive his salary, a bill to repeal the act by which it was granted being rejected by the council.<sup>7</sup>

Because of the opposition of the legislative council, the reformers found themselves powerless, in spite of their large majorities in the assembly. In the sessions of 1829 and 1830,

<sup>3</sup> *Journals*, Jan. 23 and 27.

<sup>4</sup> *Journals*, March 18; C.O. 42/388, Colborne to Murray, April 6.

<sup>5</sup> C.O. 42/391, Colborne to Murray, Jan. 18, 1830.

<sup>6</sup> *Journals*, March 3, 1829.

<sup>7</sup> *Journals*, Jan. 13, 1830; Jan. 11, 1833.



fifty-three of their bills were rejected by the council, including acts to abolish primogeniture, to repeal the act of 1816 in support of the civil government, to pay wages to members for the towns, to incorporate Grantham Academy (Methodist), to amend the marriage laws in favour of dissenters, to reform the jury laws, to exclude the judges from the two councils, and to render sheriffs ineligible for seats in the assembly. Debates on these abortive acts occupied most of the session, and in 1829 the dispute with the council led to the rejection of the annual bill for the building of roads and bridges.<sup>8</sup> In fact it was now proved that a reform assembly could accomplish less in the way of constructive legislation than a tory assembly, and in a new country, dependent on the legislature for attention to public works, this handicap of the reformers lessened their weight in the country, while it led to increased exasperation within their own ranks.

While the assembly was indulging in acrimonious disputes over popular rights, Colborne began on his own account to promote a strong policy. Like his predecessor he believed that democracy was the curse of the colony; that the reformers were disaffected and leaning toward the United States; that the welfare of the colony depended on retaining strong executive control, and that all concessions to popular demands should be denied; that the church establishment must be preserved; and that commercial considerations necessitated either the union of Upper and Lower Canada or the annexation to Upper Canada of the city of Montreal. But in the application of his policy Colborne displayed originality and tack unknown to his predecessor. With regard to the university he pointed out that so long as appointments to its council were in the hands of the king, there would be no danger to the Church in omitting any assertive claims as to her rights. His establishment of Upper Canada College proved the truth of this contention.<sup>9</sup> He urged that the clergy reserves be removed from the sphere of popular agitation by being vested in the crown. He realized that one cause of the failure of the Church was its inability to adapt itself to a new country, and he urged

<sup>8</sup> A list of the bills rejected is contained in the *Seventh Report on Grievances*, append. 83.

<sup>9</sup> C.O. 42/388, Colborne to Murray, April 10, 1829. See above, p. 93.

that travelling clergymen be instituted after the pattern of the Methodists.<sup>10</sup> It was Colborne who first suggested that the Wesleyan Methodists be encouraged to return to Upper Canada. He fully appreciated the fatuity of the aggressive opposition of the more extreme tories, and he wrote to England that the political past of John Strachan destroyed his clerical influence and was an actual handicap to the progress of the Church.<sup>11</sup> He believed in meeting the cabals of the radicals with dignity and prudence, instead of with recriminatory warfare. One of his first steps was to urge upon the Colonial Office a change in the composition of the legislative council. He recommended the addition of eight or ten independent members so that the reformers could no longer be justified in calling the house a mere tool of the executive.<sup>12</sup> During his administration the complexion of the council was, in fact, materially altered by the introduction of members outside the official clique at York.

Colborne's attention was chiefly directed to the encouragement of immigration. In 1831 he wrote to Lord Goderich that the American interest prevailed in all the townships along the water front, that a constant stream of Americans was still flowing into the country, and that unless England filled up the waste spaces the Americans would certainly do so.<sup>13</sup> In his eyes the promotion of emigration and the encouragement of public works even at some expense to Great Britain were the only ways of preserving the colony for the empire.<sup>14</sup> During his term of office his energies in this field were indefatigable, and to him is chiefly due the credit of handling successfully the large stream of immigrants of the early 'thirties. This work, important as it was, can only be mentioned here. Its effect was to produce a period of economic prosperity which militated against the efforts of agitators. As the decade advanced the introduction into the colony of an increasing body of new settlers, who, though more democratic than Colborne expected, were at least unaffected by the bitterness

<sup>10</sup> C.O. 42/388, Colborne to Murray, April 11.

<sup>11</sup> C.O. 42/388, Colborne to Hay, March 31.

<sup>12</sup> C.O. 42/388, Colborne to Murray, Feb. 16, 1829.

<sup>13</sup> C.O. 42/394, Colborne to Goderich, Nov. 25; C.O. 42/411, Colborne to Hay, Sept. 21.

<sup>14</sup> C.O. 42/414, Colborne to Hay, April 20, 1833.



engendered by the American Revolution and the War of 1812, forecasted a less turbulent epoch in the history of the province. But this was not to be achieved prior to 1837.

In 1830 Colborne reached the height of his popularity. The contrast of his methods with those of Maitland had not ceased to elicit favourable comment, and Colborne was freer of the official clique than was the case a few years later. The violence of the agitation in the assembly combined with the paucity of its achievements was no doubt distasteful to the average settler, so that the death of George IV, on June 25, 1830, was most opportune for the executive. In the election which necessarily followed, the reformers were subjected to a humiliating defeat. They obtained only about seventeen seats in a house of fifty-four.

A wiser policy in the colony was but a reflection of more liberal views in Great Britain. There during the 1820's, the old-fashioned tories, such as Sidmouth and Castlereagh, had been gradually superseded by younger and more liberal men, less affected by the conservative reaction after the French Revolution. As early as 1823-5, Huskisson, as President of the Board of Trade, and Robinson, Chancellor of the Exchequer, had made the first inroads on the restrictive tariffs of the old colonial system. Colonial policy, other than commercial, failed for some years to reflect this liberal tendency, because of the prolonged administration of Earl Bathurst, Colonial Secretary from 1812 to 1827. Indeed it was not until the triumph of the liberals in the election of 1830 that Robinson, now Lord Goderich, took over the Colonial Office, and inaugurated there a more liberal policy.<sup>15</sup> But the House of Commons was more advanced than the Colonial Office, and in 1828 Huskisson had moved for a committee on the government of the Canadas. Its report, though never adopted by the House, had important effects. It recommended that the revenues collected at Quebec be placed under the control of the assembly, on the condition that a permanent civil list be first granted; that a more independent character be given to the legislative councils; that the charter of King's College be altered to exclude religious tests; that the proceeds of the clergy reserves be expended

<sup>15</sup> Robinson had been Secretary of State for the Colonies for a few months in 1827.

for the benefit of all denominations ; that the judges, except the chief justice, be excluded from the councils ; that the jury laws be amended ; and that the influence of the British parliament be limited to questions affecting imperial relations. " They are most anxious to record their complete conviction," ran the report, " that neither the suggestions they have presumed to make, nor any other improvements in the laws and constitution of the Canadas, will be attended with the desired effect, unless an impartial, conciliatory and constitutional system of government be observed in these loyal and important provinces."<sup>16</sup>

When the whigs came into power in 1830 this report became to them a veritable guide-book of Canadian policy. Further than it they were loth to go, but within its bounds they conceded several reforms. The struggle for the control of the crown revenues belongs chiefly to the history of Lower Canada, no claim over it being made in Upper Canada until the committee advocated its surrender. Concessions in Lower Canada, however, necessitated similar ones in Upper Canada, and on December 24, 1830, Goderich wrote to Colborne that the revenue from the duties established by the Act of 14 George III was to be turned over to the assembly. In return Colborne was to ask for a permanent civil list of 10,800*l*.<sup>17</sup>

Colborne accordingly raised the question in 1831. The assembly objected to voting that part of the governor's salary which had been previously met from the casual and territorial revenue, and it retained in its own power the annual vote for the contingencies of government and the minor offices, but it provided a total civil list of 6500*l*., including salaries of the governor, judges of the King's Bench, attorney- and solicitor-general, five executive councillors and the clerk of the council, thus securing the independence of the chief crown officers.<sup>18</sup> This act displeased two sets of people. The extreme tories complained that the majority of the officials, including the speaker of the legislative council, were reduced to the undignified position of dependence on the assembly for the annual vote of their salaries, and that many reductions had been

<sup>16</sup> *House of Commons' Reports*, 1828, vol. VII.

<sup>17</sup> C.O. 43/43.

<sup>18</sup> 1 Geo. IV, cap. XIV. C.O. 42/393, Colborne to Goderich, March 21, 1831.



made in salaries which had been granted permanently.<sup>19</sup> The extreme radicals had sought to follow the example of Lower Canada and to refuse any civil list for a longer period than a year, in order to control the executive. They dubbed the act the "everlasting salary bill," and regarded it with extreme spleen. But the governor, the Colonial Office, and all moderate men accepted the act as a beneficent reform which removed one of the grievances of the province. It was, of course, only a partial measure in the direction of complete financial autonomy. The customs duties surrendered in 1831 amounted to 33,840*l.*, whereas the casual and territorial revenue still retained in the control of the executive was estimated at 28,230*l.* for 1831.<sup>20</sup> These revenues were still drawn upon to meet all the unpopular charges which the assembly refused to vote, so that there remained ground for agitation respecting the control of the state revenues. Efforts on the part of Lord Goderich to persuade Colborne to reduce salaries and simplify the establishment of Upper Canada, though strongly pressed, were successfully combatted by the governor, so that the whig policy of retrenchment had little effect in Upper Canada.<sup>21</sup>

The tenure of office of the judges, which had become so tender a question after the dismissal of Judge Willis, received attention at this time. A rumour that the chief justice was to be removed from the executive council reached Upper Canada as early as September, 1830, and created great consternation among the tories.<sup>22</sup> The rumour was confirmed by a despatch of February 8, 1831, in which it was announced that his majesty would, in the future, nominate no judge to the executive or legislative councils, except the chief justice, who would continue to sit in the legislative council for the purpose of giving legal advice in framing the laws.<sup>23</sup> Colborne was further instructed to propose a bill for changing the tenure of judicial office to good behaviour. This message was at once communicated to the legislature, and the chief justice resigned his seat in the executive council. The opposition of the

<sup>19</sup> C.O. 42/418, Colborne to Stanley, April 15, 1834; C.O. 42/426, Colborne to Glenelg, Aug. 19, 1836.

<sup>20</sup> C.O. 42/411, Colborne to Goderich, Dec. 31, 1832.

<sup>21</sup> C.O. 43/42, Murray to Colborne, Nov. 30, 1829.

<sup>22</sup> C.O. 42/391, Colborne to Hay, Sept. 17.

<sup>23</sup> C.O. 43/43, Goderich to Colborne, Feb. 8, 1831.

legislative council delayed until 1834 the passing of an act to render the judges independent.

Yet in spite of greater liberality in the Colonial Office and marked progress in the colony, the political warfare in Upper Canada between the tories and radicals raged on. The failure of Colborne to cope adequately with the situation, and his gradual conversion to the views of the extreme tories, proves how deep-rooted were the animosities of the little community. A pretext for quarrelling was found in the license of the press. Certain of the provincial newspapers were penned in a tone of personal abuse which would not be tolerated to-day. Between the tory papers and those of the radicals there was little to choose in this regard, and the only policy worthy of countenance was either to prosecute both impartially, or better, to have considered all beneath the notice of the government. This lesson had been learned in England after many years of dire experience, but in Upper Canada the government saw fit to countenance a one-sided persecution which was regarded as a form of despotism and which won for its victims an ill-deserved martyrdom. To this mistaken policy was due the fame of Francis Collins. To it also did William Lyon Mackenzie owe the ascendancy which he succeeded in gaining over certain classes of the population.

Collins's case came before Colborne immediately on his arrival in Upper Canada. In the autumn of 1828 the attorney-general had renewed those prosecutions against Collins which he had dropped in the spring at the instance of Willis.<sup>24</sup> Collins was acquitted by the jury, but he published a report of the trial in which he accused the attorney-general of "open and palpable falsehood" and "native malignity," and called Judge Hagerman an "old customer." For this article Robinson brought in another charge of libel, and this time the jury reported a verdict of "Guilty." A severe punishment was inflicted. Collins was sentenced to one year's imprisonment, 50*l.* fine and 450*l.* security for good behaviour with two other securities of 100*l.*, pending the payment of which he was to remain in prison. As Collins was a poor man, the sentence was equivalent to perpetual imprisonment. The affair created much unfavourable comment. Robinson's action in bringing

<sup>24</sup> See above, p. 114.



a personal charge of libel against Collins on the failure of previous libel cases was considered an act of malice, and the sentence imposed was considered immoderate. Collins was held up as a martyr to the liberty of the press.<sup>25</sup>

On the day after Colborne's arrival he was presented with an address praying for Collins's relief. The beginning of a new administration has always been considered an auspicious time for acts of grace, and Colborne would have performed a tactful act had he seen fit to mitigate the punishment. But he probably felt that it would be unfair for him to interfere in a case which belonged to the administration of his predecessor, and he gave the petitioners no encouragement. The reformers refused to be silenced. Collins petitioned the assembly, and on January 21 it passed, almost unanimously, an address urging the remittance of the punishment. Colborne again returned an unfavourable answer, and the assembly proceeded to pass a series of fifteen violent resolutions in which it impugned the executive for prosecuting libels on party grounds. The sentence against Collins was pronounced "shamefully disproportioned to the offence and subversive of the freedom of the press." An appeal was made to the king to relax the sentence.<sup>26</sup> A few days later Colborne was hanged in effigy at Hamilton, and over the effigy was found this placard: "Thus perish all upholders of British feeling."<sup>27</sup>

Collins's case, therefore, did not result entirely to the disadvantage of Colborne, for the ill feeling which he provoked in refusing to remit the sentence was neutralized by the indignity to which his name was subjected at Hamilton. Collins in prison continued to issue the *Freeman* with a regularity which must have been provoking to his opponents, until the interference of the crown officers in England ultimately procured his release.<sup>28</sup>

Of more serious importance was the persecution of Mackenzie. The success of the tories at the polls in 1830 acted as a new exasperation to Mackenzie. In the session of 1831 he advanced motion after motion for enquiry into various abuses. He

<sup>25</sup> C.O. 42/388, Colborne to Murray, April 3; C.O. 323/158, Colborne to Hay, March 5.

<sup>26</sup> C.O. 42/388, Colborne to Murray, April 3; *Journals*, Jan. 21, 24, and 26.

<sup>27</sup> C.O. 42/388, Colborne to Hay, March 5; *Journals*, Feb. 14, 1829.

<sup>28</sup> C.O. 42/390, Opinion of Crown Officers, June 22. Collins died of cholera in 1834.

secured a committee on the state of representation of the people, whose report typifies the weakness and strength of Mackenzie's methods of agitation. The report was obviously inspired by the great reform movement in England. It gave elaborate figures to prove that the representation in the assembly was not fairly distributed according to the population; that one-half of the members were returned by one-third of the population, etc. These figures do not carry much conviction. The report embodied, however, other matters of great importance. Appended to it was a table of offices of profit and emolument held by members of the assembly which showed that many of the members held such offices as sheriff, district judge, postmaster, collector of customs, and so on. The report noted the disorders at elections and recommended vote by ballot and a single day's poll as a remedy. Such complaints as these, though no doubt suggested by the views of the British radicals, had a sufficient local application to carry weight.<sup>29</sup> Mackenzie showed no originality nor had he any judgment or discrimination or power of ordered logical thought. His one method of parading grievances was to enumerate them in lists, giving no more prominence to the greatest than to the most imaginary. His strength was that many of the grievances which he urged were not merely the product of a frenzied imagination and a desire for notoriety, but were firmly imbedded in fact.

As might have been expected, Mackenzie's reports, motions, bills and speeches, were nothing more than an exasperation to the assembly of 1831. Before the session was over the tories had resolved to get rid of him. Mackenzie had distributed at his own expense several copies of the *Journals* of the house. On February 10, a motion was introduced that this was a breach of privilege but was defeated by twenty-four to eleven.<sup>30</sup> During the summer recess Mackenzie carried his agitation into the country. He called a town meeting at York and submitted a petition embodying all the current grievances. A committee was appointed to forward this petition to various radicals in England, and through the exertions of the committee similar petitions were adopted in eighteen other

<sup>29</sup> *Report on the State of Representation of the People, York, 1831.*

<sup>30</sup> *Journals.*



townships.<sup>31</sup> When the next session opened, Mackenzie at once gave notice that he would move for a full statement of the affairs of the Bank of Upper Canada ; for enquiry into contingent expenses ; for bills to repeal the law granting the chaplain's salary, to regulate the practice of banking and to investigate the Welland Canal ;<sup>32</sup> for information concerning the casual and territorial revenue, and King's College.

This officiousness was more than the assembly of 1831 could bear. To get rid of him the tories resorted to the old pretext of libel. In an article of November 24, 1831, Mackenzie had criticized the assembly for refusing to refer one of his petitions to a committee of radicals. Twelve days later he was even more severe on the assembly. " Our representative body," he wrote, " has degenerated into a sycophantic office for registering the decrees of as mean and mercenary an executive as ever was given as a punishment for the sins of any part of North America in the nineteenth century " ; and so on. On the day the latter appeared, these two articles were brought before the assembly as libels. The feeling in the house was tense, one member insisting that Mackenzie should be horsewhipped.<sup>33</sup> In spite of the efforts of the small radical section of the house, a motion for his expulsion was carried on December 12 by a vote of twenty-four to fifteen. On the following day a mob of several hundred people waited on the governor with a petition that he should dissolve parliament.<sup>34</sup> On January 2, the day appointed for the new election at York, forty sleighs escorted Mackenzie to the polls, where he was presented with a gold medal, said to have been worth two hundred and fifty dollars, bearing the inscription, " Presented to William Lyon Mackenzie, Esq., by his constituents of the county of York, in token of their approbation of his political career."<sup>35</sup> Mackenzie was elected with only one dissentient voice, and the next day he was conducted to the house by a hilarious procession.

<sup>31</sup> C.O. 42/394, Colborne to Goderich, Aug. 25, 1831 ; the petitions are contained in C.O. 42/395.

<sup>32</sup> The radicals accused the family compact of the maladministration of all the commercial concerns of the province. See below, 137 and 143.

<sup>33</sup> *Journals*, Dec. 7.

<sup>34</sup> The mob constituted 200 people, according to Colborne, C.O. 42/411, Colborne to Goderich, Jan. 31 ; 930, according to Lindsey, vol. I, p. 220.

<sup>35</sup> C.O. 42/411, *The Christian Guardian*. Allowance must be made for newspaper exaggerations in the account.

The assembly at once produced new libels. One of these was Mackenzie's election address, published in the *Advocate* of January 2 under the title, "Impeachment or public accusation against the lieutenant-governor of the province and advisers of the Crown." The other libel was a re-publication of one of the articles for which he had been previously expelled, with a black list of the members who had voted against him. While Mackenzie was being heard in his defence a messenger brought a series of resolutions passed by the legislative council, calling on the assembly for reparation for a libel on their house which had been published in the *Advocate* on January 5.<sup>36</sup> Mackenzie was forthwith expelled for the second time and declared "unfit and unworthy" to hold a seat in the present parliament. In this action the assembly quite exceeded its authority. The expulsion was carried by a vote of twenty-seven to nineteen, and by the same vote the house rejected a motion of Perry and Bidwell that the two expulsions had caused such great excitement that it was necessary to vindicate the conduct of the assembly by a dissolution.<sup>37</sup>

Once more Upper Canada was thrown into turmoil. Mackenzie's paper came out in mourning with an inflammatory address to the people, urging them to petition the imperial parliament. Radical meetings were held throughout the province which were replied to by counter-meetings expressing loyalty and contentment. In some places riots occurred, each party seeking to dominate the meeting which had been called.<sup>38</sup> Certain of the grievance petitions were submitted to the assembly, which reported adversely upon them, but the majority were placed in Mackenzie's hands to be utilized on his mission to England which he undertook in April, 1832.<sup>39</sup>

Mackenzie arrived in England in May and at once began to bombard the Colonial Office with representations. His various papers, expounding the grievances of Upper Canada with characteristic verbosity, fill two large volumes of the records

<sup>36</sup> *Journals*, Jan. 6; Lindsey, vol. I, p. 237.

<sup>37</sup> *Journals*, Jan. 9. A full account of the case is contained in C.O. 42/411, Colborne to Goderich, Jan. 31, 1832.

<sup>38</sup> C.O. 42/411, Colborne to Goderich, March 24; *Talbot Papers*, pt. II, p. 117.

<sup>39</sup> *Journals*, Jan. 28; C.O. 42/411, Colborne to Goderich, Feb. 8. The petitions are contained in C.O. 42/413.



of the Colonial Office.<sup>40</sup> His first long paper was an elaboration of his report of 1831 on the representation of the people, and was no doubt designed to evoke sympathy in England. A second paper on the expediency of dissolving the provincial legislature and of recalling Colborne dealt with the details of Colborne's administration. A third paper on the war sufferers advocated that they be paid from the revenues of the crown lands. There were also papers on trade with Lower Canada, the jury laws, the post office, the bank monopoly, etc. All these papers tended, however, to degenerate into a list of miscellaneous grievances. Having gained access to the Blue Books of Upper Canada, Mackenzie's sharp eye detected many inaccuracies, concerning which he made the foulest imputations. In fact the fiery little man with his pessimistic mind recorded on paper a black picture of a thousand grievances for the redress of which he appealed to Lord Goderich, while he also appealed to the British public in a book entitled *Sketches of Canada and the United States*, in which many of these same grievances were embodied.

It was a difficult situation for a minister of the crown in England to face. From Upper Canada Colborne wrote that the peace of the province depended on Mackenzie being discountenanced.<sup>41</sup> On the other hand Mackenzie was in close connection with Hume and Roebuck, and other radical members of the British parliament, his representations found publishers in the British press, and even had Lord Goderich felt disinclined to attend to Mackenzie's complaints, it would have been politically inexpedient to ignore them altogether.<sup>42</sup> In fact Goderich was sincerely anxious to gain information and to redress what grievances he could, so that Mackenzie's reception, though cautious, was polite. He was not received as an agent delegated by the people, and the Colonial Office refused to discuss the various petitions of grievances with him, but as a private individual his representations received careful attention.<sup>43</sup> He was granted several personal interviews with the Secretary of State.

<sup>40</sup> C.O. 42/413 and 417.

<sup>41</sup> C.O. 42/411, Colborne to Hay, June 5, 1832.

<sup>42</sup> The *Spectator* and *Morning Chronicle* published several articles by Mackenzie.

<sup>43</sup> C.O. 42/413, Howick to Mackenzie, Sept. 8; C.O. 42/417, Mackenzie to Goderich, Jan. 9, 1833.

The first action taken upon his representations was a despatch of Lord Goderich to Colborne dated November 8, 1832,<sup>44</sup> in which he wrote: "It is with no intentional disrespect to Mr. Mackenzie that I remark that he has adopted a style and method of composition singularly ill-adapted to bring questions of so much intricacy and importance to a definite issue, but however discursive may be his papers, or however acrimonious their tone, I am not, on that account, disposed to withdraw my attention from any useful suggestions that they may contain for the public good."

The despatch proceeded to state that Mackenzie represented the views of only a relatively small portion of the people, there being only 12,075 signatures to his petitions, while counter-petitions contained 26,854 signatures. This was a misstatement which Goderich afterwards corrected, for Mackenzie's signatures numbered at least twenty thousand.<sup>45</sup> But the point is unimportant, as it was notorious that both sides employed various artifices to gain signatures. A more pertinent statement was that many of Mackenzie's complaints were subjects for the local parliament and did not justify interference from England. It should be remembered in Mackenzie's defence, however, that the composition of the legislative council practically nullified local redress. Goderich very naturally declined to discuss cases of individual complaint belonging to the past. The reformers never appeared in a worse light than when resurrecting such grievances which should long since have been buried and forgotten. Goderich did enjoin upon Colborne and his councillors complete abstinence from participation in election contests; he recommended that all public accounts including the crown revenues be laid before the legislature; he advised the bishop and archdeacon to resign their seats in the councils; and he agreed to assent to an act limiting the number of place-holders in the assembly.

When one considers the enormous number of charges advanced by Mackenzie, and the radical nature of his representations, it is plain that this despatch of Goderich was so mild as to be almost a repudiation of Mackenzie's representa-

<sup>44</sup> C.O. 42/417.

<sup>45</sup> C.O. 43/43, Goderich to Colborne, Jan. 1, 1833.



tions. Had it been received in that spirit in Upper Canada it might have been used as an effective tool to discredit the radicals. But the attitude of the Upper Canadian officials was very different. Colborne expressed his indignation that so much attention had been bestowed on a man "detested by a large majority of the most respectable classes in the province, and known to be a seditious and unprincipled demagogue, who had been labouring for many years to create disaffection."<sup>46</sup> On January 19 Colborne laid the despatch before the legislature. This precipitated a violent debate. On a motion that a thousand copies of the despatch and documents appended to it be printed for the use of members, two tories advanced a counter motion that the assembly had no desire to become the organ of communication between the crown and the petitioners or their agents, nor to register documents intended to bring the assembly into contempt, and that, therefore, the despatch should be returned to Colborne. Supporting this motion, Hagerman, the solicitor-general, advised that the house express its strong disapproval of the despatch. "I despise," he is reported to have said, "those who would publish such a document."<sup>47</sup>

The reformers did not allow such indiscretions on the part of the officials to pass. They took the position that the tories were seeking to conceal the truth; that Lord Goderich had espoused the cause of the reformers; and that, moreover, the officials had uttered seditious remarks against the crown, thus proving that their boasted loyalty worked only when it upheld their own ideas. Fortunately the more extreme tories were defeated, by twenty-two to seventeen, and it was finally voted that the despatch without its appendices should be printed and laid on the table.<sup>48</sup> On February 9, the debate was resumed on a motion of Perry and Bidwell for an address thanking his majesty for the despatch. This was met by a tory motion of regret that Lord Goderich had seen fit to pay so much attention to Mackenzie's allegations. The legislative council was even more outspoken. It returned the despatch to Colborne with the remark that it was not necessary to

<sup>46</sup> C.O. 42/414, Colborne to Hay, Jan. 16.

<sup>47</sup> *Journals*; C.O. 42/417, enclosed in Goderich to Colborne, Nov. 8.

<sup>48</sup> *Journals*, Jan. 24.

consider its contents. "We cannot say that it may not possibly give satisfaction to some persons in this province to observe the condescending and respectful manner in which representations of so peculiar a description, proceeding from an individual, have been received and replied to, notwithstanding that they are outrageously insulting to all the constituted authorities of this colony and scarcely less so to the people at large."<sup>49</sup>

It was such language as this which formed the best justification of the agitation of the radicals. When a small body of office-holders set their faces against all political reform, and even denied that reform would ever be necessary, while they regarded their opponents "with unqualified contempt," it was time that steps should be taken to disturb their monopoly of power. Certainly it was just such procedure which gave to agitators the influence which they attained.

Mackenzie had no sooner received news of the reception of Goderich's despatch than he played his cards well. He withdrew a violent petition which he had entrusted to Hume for presentation to the imperial parliament.<sup>50</sup> He wrote to Goderich expressing his gratification and pointing out that the good intentions of the Colonial Office could not be carried out unless the offices of the colonial government were filled with persons "both able and willing to co-operate with his majesty's government in their beneficent designs." But the attorney- and the solicitor-general were not of this calibre. They had opposed the recommendation for the independence of the judges; they had supported the repeal of the Lower Canadian immigration tax; they had advocated the annexation of Montreal to Upper Canada; they had opposed the alteration of the charter of King's College and the reinvestment of the clergy reserves in the crown; they had supported Mackenzie's expulsion and had voted for returning Lord Goderich's despatch to the governor.<sup>51</sup>

Independent of Mackenzie's representations the Colonial Office had reason to be displeased with the conduct of the crown officers. Lord Goderich had never approved of the two

<sup>49</sup> C.O. 42/414, enclosed in Colborne to Goderich, Feb. 15.

<sup>50</sup> C.O. 42/417, Mackenzie to Howick, Feb. 27.

<sup>51</sup> C.O. 42/417, Mackenzie to Goderich, March 8.



expulsions of Mackenzie in the winter of 1831-2. He believed that the only way in which Mackenzie could acquire influence was by causing it to be believed that he had been treated with injustice or oppression on account of his political opinions. Mackenzie's libels, he thought, might safely be ignored, or at least have been tried in the ordinary courts of law. It had been established in the celebrated case of John Wilkes that one house of parliament had no right to create a disability by pronouncing a member incapable of sitting.<sup>52</sup> In the face of a very definite pronouncement of disapproval on the part of Lord Goderich the assembly continued its fatuous persecution. Mackenzie had been re-elected after his second expulsion, and at the opening of the fall session, on November 2, 1832, while he was still absent in England, a motion seconded by the attorney-general was carried to the effect, that as Mackenzie had been twice expelled and declared unworthy of sitting, he was incapacitated from sitting in the present house. This motion was carried by a vote of fifteen to eight, and a new writ was issued for York. On November 30 the news reached the house that Mackenzie had been returned for the fourth time, without opposition. On February 9, the same day on which the house voted against Lord Goderich's despatch being entered on the Journals, it was declared by a vote of eighteen to seventeen that "William Lyon Mackenzie, returned to serve in this assembly as knight, representative for the county of York, is the same William Lyon Mackenzie mentioned in the said entries, and thrice expelled from this house and declared unfit to hold a seat therein during the present parliament; that by reason thereof the said William Lyon Mackenzie cannot vote in this house as a member thereof."<sup>53</sup> A motion for a new election was defeated by sixteen to nine.

The news of this procedure reached Goderich at the same time as the news of the reception of his despatch. He at once wrote to Colborne pointing out that, if the officials of the crown persisted in opposing the crown's policy on a series of important political questions, the sincerity of the government would be seriously called into question. Under such circumstances, the only course which he could adopt was to dismiss

<sup>52</sup> C.O. 43/43, Goderich to Colborne, April 2, 1832.

<sup>53</sup> *Journals*.

Messrs. Boulton and Hagerman.<sup>54</sup> Colborne was further to inform all office-holders in both houses of parliament that, if they could not acquiesce in important measures recommended by the crown, they were to resign. He suggested that John Rolph be appointed solicitor-general, and Jameson, a member of the British bar, was appointed attorney-general.<sup>55</sup>

These dismissals were received in Upper Canada as an additional insult to the official party. Colborne wrote in protest that it had always been the practice for the official members of the assembly to vote as private individuals; that it was well known in the province that the governor had stood aloof from the expulsions of Mackenzie; and that, had the crown officers voted against the expulsion, it would have been interpreted as an act of governmental interference in Mackenzie's favour. Colborne concluded his letter with an eloquent appeal for unity in the ranks of all those opposing the rising tide of democracy in the Canadas.<sup>56</sup> Less official tory criticisms were more abusive. Goderich was denounced at a public meeting as a "weak and imbecile minister." One newspaper fulminated as follows: "Instead of dwelling with delight and confidence upon a connexion with the glorious empire of their sires, with a determination to support the connexion as many of them have already supported it, with their fortunes or their blood, their affections are already more than half alienated from the government of that country, and in the apprehension that the same insulting and degrading course of policy toward them is likely to be continued, they already begin to cast about in their mind's eye for some new state of political existence which shall effectively put the province beyond the reach of injury and insult from any and every ignoramus whom the political lottery of the day may chance to elevate to the chair of the Colonial Office."<sup>57</sup> Once more the radicals ridiculed the supposed loyalty of the officials.

The reformers were proportionately elated by the dismissal of the crown officers, but their triumph was short-lived.

<sup>54</sup> C.O. 43/43, Goderich to Colborne, March 6, 1833.

<sup>55</sup> C.O. 43/44, Goderich to Colborne, March 26, 1833.

<sup>56</sup> C.O. 42/414, Colborne to Goderich, April 30, 1833.

<sup>57</sup> C.O. 42/416, Kennedy to Stanley, May 23; *Seventh Report on Grievances*, append. 88.



Goderich was replaced at the Colonial Office on March 28, 1833, by Lord Stanley. Stanley was soon confronted, not only with a series of letters of protest from Colborne, but with personal representations made by Hagerman in England.<sup>58</sup> As a result he saw fit to restore Hagerman to his post of solicitor-general, and to appoint Boulton chief justice of Newfoundland.<sup>59</sup> Whatever opinion may be formed of the advisability of the original dismissal of the crown officers, there can be no doubt that their re-appointment within three months of dismissal laid the Colonial Office open to charges of bad faith and inconsistency, which were made much of by the radicals in the colony.

Mackenzie's representations had several lesser results. His suggestion that the territorial revenue be applied to pay the war claimants was adopted, though not, as he desired, to relieve the province of its share of the burden, but to relieve Great Britain of hers. His complaint against the post office was instrumental in bringing about a change of policy with regard to that institution. Henceforth, also, the Colonial Office was more careful about the accuracy of the Blue Books and demanded more prompt returns. But the most noticeable case in regard to which Mackenzie's advice was followed was that of the bank acts.

The Bank of Upper Canada had been incorporated in 1821. From the beginning it had been closely connected with the government. In 1831, one-fourth of its shares were held by the government, and the lieutenant-governor appointed four out of its eleven directors.<sup>60</sup> For this reason, though it was a very flourishing institution, it was opposed by the radicals as a part of the official monopoly. In the session of 1831-32 an act was passed to double its capital stock and the government shares of that stock.<sup>61</sup> Another act established a similar bank at Kingston.<sup>62</sup> Against these two acts Mackenzie turned his batteries. His real complaint was doubtless that the banks were "a dangerous engine of political power, improperly

<sup>58</sup> C.O. 42/416, Hagerman to Stanley, May 11.

<sup>59</sup> C.O. 43/44, Stanley to Colborne, July 4, 1833.

<sup>60</sup> C.O. 42/393, Colborne to Goderich, June 30, 1831; C.O. 42/376, Boulton to Horton, Dec. 15.

<sup>61</sup> Cap. X.

<sup>62</sup> Cap. XI.

vested in the hands of a few families monopolizing the chief offices of the country," but his paper on the bank acts pointed out many other objections on the score of unsound currency and insufficient security.<sup>63</sup>

His argument carried great weight at the Colonial Office, not only because currency problems had always been mooted between England and her colonies, but because England herself had gone through banking crises in the past twenty years. The case was referred by the Treasury to the Board of Trade, who pronounced Mackenzie's objections valid and recommended that the two bank acts be disallowed. Accordingly Stanley wrote to Colborne that his majesty intended to disallow the acts.<sup>64</sup> The despatch caused great consternation in Upper Canada. The country was prosperous and the bank's credit unquestioned. Most of the new stock had already been subscribed, so that the rumoured disallowance entailed considerable dislocation of business. The assembly appointed a committee on the subject, and on a vote of thirty-one to one passed the following address to the king.<sup>65</sup>

"Against such an interference we respectfully, but plainly and solemnly protest as inconsistent with those sacred constitutional principles which are essential to free government, since it is manifest that if your majesty's ministers, at a distance of more than four thousand miles, and not at all controllable by, or accountable to your majesty's subjects here, and possessing necessarily a slight and imperfect knowledge of the circumstances of this country, the wants and habits and feelings of the inhabitants, and the mode of transacting business among us, can dictate a course, in relation to measures affecting ourselves only, different from that which the people by their representatives, with the concurrence of the other branch of the provincial legislature, have chosen, we are reduced to a state of mere dependence upon the will and pleasure of a ministry that are irresponsible to us, and beyond the reach and operation of the public opinion of the province. . . . Although from the necessity of the case, power must be granted to the head of the empire of preventing colonial laws

<sup>63</sup> C.O. 42/417, Mackenzie to Goderich, March 4, 1833.

<sup>64</sup> C.O. 43/44, Stanley to Colborne, May 30, 1833.

<sup>65</sup> *Journals*, March 3, 1834; C.O. 42/418, Colborne to Stanley, Feb. 26, 1834.



being adopted and enforced which are incompatible with the treaties between your majesty's government and foreign states or with the just rights of other of your majesty's colonies, yet with these exceptions, we humbly submit, that no law ought to be, or rightfully can be, dictated to or imposed upon the people of this province, to which they do not freely give their consent, through the constitutional medium of representatives chosen and accountable to themselves."

This remarkable address, proceeding unanimously from a tory assembly, illustrates the confusion of parties in the province. It was always maintained that the reformers were hostile to the British connection and that the tories were its chief supporters, but in this case two provincial bills were disallowed at the instance of the Upper Canadian radicals, while the power of disallowance was denied by the Upper Canadian tories. Nothing shows more clearly that the real difficulty was the monopoly of power in the hands of a certain class, irrespective of the wishes of the people, and that the imperial connection was involved only in so far as it was responsible for this state of affairs.

The opposition to the disallowance of the bank acts proved too strong for the Colonial Office, which finally suspended the orders-in-council for disallowance. It will be observed that the permanent achievements of Mackenzie as a result of his mission to England were relatively insignificant.

Mackenzie left England in June, 1833, and arrived in Canada in August. While in England he had sent back favourable reports of the friendly and conciliatory attitude of the Colonial Office.<sup>66</sup> But he was undoubtedly disappointed at the reversal of his more important achievements, and on his return to the province his violence broke out anew. Mackenzie never again advocated appeal to England, but based his hopes of reform on an elective legislative council, a programme already advocated in Lower Canada.<sup>67</sup>

The third session of the provincial parliament opened on November 19, 1833. Mackenzie had been declared incapable of sitting in the assembly after his third expulsion, but on the

<sup>66</sup> C.O. 42/413, Colborne to Goderich, Oct. 31; *Sketches of Upper Canada and the United States*, p. XVI.

<sup>67</sup> C.O. 42/415, Colborne to Hay, Dec. 14.

opening of parliament he reappeared and demanded that the oath be administered to him. This was refused. On November 20, Bidwell moved that Mackenzie had been duly elected and was under no legal disqualification to sit and vote, but this was defeated by thirteen to twelve. On December 2, a motion was carried by eighteen to fifteen, that "William Lyon Mackenzie having been expelled this house and declared unfit and unworthy to take a seat as a member of the same during the present parliament, this house being convinced of the propriety of such expulsion and declaration, will not allow the said William Lyon Mackenzie to take a seat or vote as a member of this assembly during the present parliament." This was followed by a vote that a new writ be issued for York. The whole procedure was confused and arbitrary. The narrow majorities by which these votes were passed indicate that many of the members were beginning to appreciate the error of their previous conduct. On December 16 Mackenzie was re-elected without opposition, and a mob of three hundred persons escorted him to the assembly.<sup>68</sup> The house was cleared with some violence, and a vote passed expelling Mackenzie once more, although he had not yet taken the oath required of members. The governor, on Mackenzie's appeal, directed that the oath be administered, but the order came too late to prevent his expulsion on December 17.<sup>69</sup> On February 11, 1834, Mackenzie, having taken the oath, took his seat in the assembly, but was removed forcibly by the sergeant-at-arms.<sup>70</sup> As this was the last session of the eleventh parliament, no further attempt was made to secure for York its proper representation. An act of 1834 incorporated the town of York as the city of Toronto, and a majority of radical aldermen being returned in the municipal elections, they selected Mackenzie as their first mayor.<sup>71</sup>

So ended the most discreditable chapter in the history of the Upper Canadian legislature. The whole procedure was a patent imitation of the treatment of Wilkes in the British parliament more than sixty years before, although the in-

<sup>68</sup> *Journals*.

<sup>69</sup> C.O. 42/415, Colborne to Stanley, Dec. 23.

<sup>70</sup> C.O. 42/418, Colborne to Stanley, Feb. 17; C.O. 42/414, Mackenzie to Stanley, April 29.

<sup>71</sup> Lindsey, vol. I, p. 313.



expediency of that expulsion had been clearly demonstrated and its illegality placed on record, and this fact was recognized by the Colonial Office. The extent of the support which accrued to the radicals by reason of the persecution of Mackenzie can only be appreciated after a consideration of other facts which were tending to breed dissensions among the reformers.

## CHAPTER IX

### DEMOCRACY AND REPUBLICANISM

THE decade of the 'thirties presents considerable difficulty to the student. Two distinct facts stand out and demand explanation. One is that the radicals never again attained the influence which they had possessed in the assembly of 1829. In that house all the men who at any time had called themselves reformers seemed to be pulling together. As the decade advanced, some of the more prominent of these men either became avowed supporters of the government, or retired from political life. We find the second problem in the fact that these defections from the ranks of the radicals by no means led to the total eclipse of the party. The agitation of grievances continued to produce unrest throughout the period, and public opinion appeared so vacillating and elusive that it changed its political colour at every election from 1828 to 1836. The radical assembly of 1829 was displaced in 1830 by a conservative one; it in turn by a radical house in 1834, and again the tories predominated in 1836. The absence of an organized party system gave greater weight to individuals at the polls than they have to-day, but this only partially accounts for the peculiar fluctuations within the assembly.<sup>1</sup>

A more important consideration is that the majority of the reformers were progressive in politics only. For the most part they represented the poorer settlers, the small farmers, with little knowledge of finance and little business initiative. The Colonial Office and its representatives in Canada may have been indifferent to the political progress of the colony, but they were keenly interested in its economic development. Men

<sup>1</sup> In Upper Canada, where no party organization existed, men were commonly designated according to the political terms in vogue in England. The terms "radical" and "reformer" were used indiscriminately of the men who opposed the administration. Supporters of the government were commonly called "tories." The word "whig" was never used.



of capital were sufficiently few in number to be prized by the government, and in the absence of the variety of vocations which a more developed society presents to men of enterprise, such men were usually attracted to politics. The radicals, resentful against this class of men because of the political monopoly which they enjoyed, tended to attack their financial policy as well. Mackenzie opposed the chartered banks; he exerted all his influence to prove corruption on the part of the managers of the Welland Canal; he considered the Canada Land Company an objectionable monopoly; he was indifferent to the repayment of the war losses because the chief sufferers were men of capital connected with the government; he was definitely hostile to the movement for the annexation of Montreal which had its origin in economic considerations; he had no good word to say for Colborne's immigration policy. "We of Upper Canada are less anxious to encourage by specious misrepresentations a vast influx of settlers from Europe, ignorant of the situation of the country, and therefore too apt to be careless of its true interests, than we are to obtain the blessings of self-government and freedom for those who now constitute the settled population."<sup>2</sup>

In this respect Mackenzie typified the radical members of the assembly. These men were afraid of increasing the public debt. Like their fellows in England they called loudly for retrenchment; yet the public works which were so vital to the progress of the pioneer land could be obtained only by mortgaging the provincial resources. A cursory glance at the statute book is sufficient to establish the difference of opinion prevailing on this point. The conservative assemblies of 1831-4 and 1836-40 passed numerous acts establishing local companies for public works, granting liberal sums for public improvement, borrowing cheerfully on the credit of the province, and lending large sums to promote private enterprise. The reform assemblies of 1828-30 and 1835-36 accomplished very little along these lines. In 1831 the radicals petitioned against the public debt which had been incurred to the amount of 155,972*l.*, almost entirely for public improvements.<sup>3</sup> By 1837 the debt amounted to 587,671*l.* No doubt

<sup>2</sup> *Sketches of Canada and the United States*, p. XXI.

<sup>3</sup> *Journals*, 1831-32, First Report on Grievance Petition, Jan. 19, 1837.

there was some justice in the complaint of the reformers. Young countries are apt to play fast and loose with their future, and Upper Canada was to experience great difficulty in weathering the financial crisis of 1837 which caught the whole continent. The reformers failed, however, to consider that debts incurred in public improvements are themselves assets, and, if judiciously incurred, ultimately carry their own remuneration. In opposing public enterprise the radicals set themselves against the spirit of the community and consequently suffered in the estimation of the public. On the other hand, the government by its economic policy appealed to the interests of the community, and in addition enjoyed the advantage of patronage through the negotiation of contracts and loans.

A second consideration, important, though difficult to estimate, was loyalty to Great Britain. A colony is placed in a dilemma because of its dependence. Progress, political as well as economic, is essential to the prosperity of any community, and yet in a dependency a desire for political progress can always be interpreted by opponents as disaffection. On the other hand, a temptation is always afforded to the discontented members of a colony to attribute all the evils of the provincial society not to their natural causes, but to the state of dependence on another power, for it is easier to see the mote in another's eye than the beam in one's own. This was peculiarly true in Upper Canada because of her proximity to the United States, whose prosperity threw into dark relief the backwardness of this inland colony.

Both the tendency to attribute all political evils to Great Britain, and the reverse tendency to consider all reformers disaffected, were unusually prevalent in the early history of Upper Canada because of the lurid recollections, still in all minds, of the revolt of the thirteen colonies. It was natural that the bitterness between loyalists and republicans, which was the aftermath of the American Revolution, should be transmitted to Canada, where both parties were settled side by side. Yet the point must not be pressed too far. The constant policy of the Canadian radicals until 1836 was to lay the blame for defects in the colonial government not upon Great Britain, but upon the local oligarchy. Besides where



did all the agitators in Upper Canada come from? Thorpe, Wilcox and Weekes, who troubled the colony before 1815, were Irishmen. So also were Francis Collins and William Warren Baldwin, the first a Roman Catholic, the second a Munster Protestant. John Galt and Thomas Dalton came from England, while Robert Gourlay and William Lyon Mackenzie hailed from Scotland.<sup>4</sup> Peter Perry and Egerton Ryerson were the sons of genuine loyalists. Yet all these men, in 1830, were working together as reformers. The two Bidwells were the only outstanding reformers from the United States.

The political life of Upper Canada, to be fully understood, must be related to that of the rest of the world. Two principles were fermenting in the life of Europe and of America,—nationalism and democracy. Of the two the latter was particularly busy in Upper Canada, producing political unrest. In their smaller sphere Bidwell, Baldwin and Mackenzie were but humble advocates of the same cause for which Lord John Russell and Francis Place and William Cobbett were fighting in England, and which produced successive revolutions throughout Europe.

This struggle for democracy assumed a special form in Upper Canada. In the first half of the nineteenth century the United States was the nearest approach to a democracy which the world presented, and it was inevitable that the democrats of the neighbouring provinces should have admired and sought to reproduce American institutions. The American Revolution had captivated imaginations further removed from the United States than was Upper Canada. It had been followed by revolts in the Spanish colonies of South America, and, in view of these events, English radicals of the school of Jeremy Bentham had evolved a theory of empire to the effect that colonies, if not early emancipated, would resort to arms to gain their independence. Hume, Roebuck, Leader, Attwood, Grote, O'Connell, Molesworth and others of the radical party in England were in sympathy with the pretensions of Canadian radicals; in fact, their programmes of reform were almost identical. Retrenchment, abolition of monopolies, religious equality, vote by ballot, etc., were agitated equally in Great Britain and Canada. Both parties were democratic; the

<sup>4</sup> For Perry and Dalton see above, pp. 117-18.

Canadian radicals were great admirers of the United States, and the British radicals considered colonies an unnecessary burden and a useless expense. This was a dangerous collocation of ideas. There is a peculiar irony in the fact that the Canadian radicals, seeking always to gain their ends through an appeal to the British parliament, should thereby have established connections with men who openly encouraged them to revolt. The British radicals, because they had lost faith in colonies and the old colonial system, and because they had no vision of a different type of empire, took delight in foretelling a second American Revolution. In April, 1834, Roebuck boasted in the House of Commons that the provinces of Canada were "at this moment in a state nearly approaching to open revolt."<sup>5</sup> Speaking of the officials of Upper Canada he called them a "pestilent brood," "a nest of wretched officials" whose "insolence, rapacity and corruption know no bounds." Hume disliked Stanley because of his Irish policy, and he took care to damn the colonial minister in the eyes of Canadians. "Although disgusted at the proceedings of his majesty's ministers in almost every department," he wrote to Mackenzie, "I shall nevertheless be ready to forward the cause of good government in the Canadas, to the utmost of my humble means, and shall be ready to attend such representations as may be deserving of exposure in the British House of Commons, where at any rate they shall be heard if not redressed."<sup>6</sup>

To the example of the American Revolution and its interpretation by British radicals, we owe the fact that republicanism was grafted on to the struggle for democracy in the Canadas by fiery spirits such as Mackenzie and Papineau. Mackenzie visited the United States in 1829. In the *National Gazette* he published an account of Upper Canada in which he painted the misrule of the provincial executive in black colours. Canada was "the distant dependency of a distant and selfish and unsympathizing power."<sup>7</sup> This article he forwarded to the Colonial Office and asked for a receipt, "it being his intention carefully to preserve for a future opportunity if it should be wanted, the best possible evidence that men of rank

<sup>5</sup> Hansard. *Parliamentary Debates*, Third Series, XXII, p. 767.

<sup>6</sup> *A New Almanac for the True Blues*, Hume to Mackenzie, June 24, 1832.

<sup>7</sup> C.O. 42/390, enclosed in Douglas to Hay, July 17, 1829.



and influence in and of England and her colonies were not ignorant in 1829, of those causes of discontent which are rapidly tending toward another dismemberment of the empire.”<sup>8</sup> In 1831 one of the proprietors of the *Commercial Advertiser*, a New York paper, published the opinion that Mackenzie’s object in visiting the United States was to concert measures of annexation. On Mackenzie’s denial of the statement, the *Washington Watch Tower* took up the affair, and maintained that Mackenzie had claimed that the people of Upper Canada were only wanting the sanction of the American government to commence a revolution.<sup>9</sup> In March, 1830, Mackenzie wrote to Hume: “It is for England to say whether, situated as Canada is and with the recent tone and temper of the great republic to the southward, she will do this part of the people justice, or whether by an obstinate perseverance in the system that fattens rulers and their minions, she will send the two tribes after the ten. I feel that I have performed my duty in giving this timeous warning.”<sup>10</sup>

Statements such as these did not mean that Mackenzie was a consistent republican and annexationist. Many protestations of loyalty fell from his lips concurrently with these threats of rebellion. In his *Sketches of Canada and the United States*, he wrote: “A closer connexion with the United States would not be to the advantage of the North American colonists. The people of the union want little or none of their products; and, if joined to the other states, they would be required to contribute their share of the naval and military expenses of the government,—a burden they are now relieved from. The influence of the French part of the population of Lower Canada would be lessened by such a connection, as would also that of the European emigrants in both provinces. Many profitable branches of trade now carried on would be annihilated, and I am not sure that a free commerce should be gained.”<sup>11</sup> All such evidence would tend to prove that Mackenzie was not actually plotting rebellion, but that the idea had captivated his imagination as a possible last resort.

<sup>8</sup> *Ibid.*, Mackenzie to Colonial Secretary, June 29, 1829.

<sup>9</sup> *Upper Canada Herald*, Oct. 6, 1831.

<sup>10</sup> C.O. 42/392, Hume to Murray, April 20.

<sup>11</sup> *Sketches of Upper Canada and the United States*, p. 386. For other examples see Lindsey, vol. I, pp. 164-78.

Nevertheless, a suspicion of disloyalty was the most potent influence against the reformers in the 'thirties. It was said in a fly sheet of 1832 : " We now see disaffection disseminating the doctrines of a designing demagogue who aims at engrafting republicanism on a British constitution and disturbing the tranquillity of our peaceful abode with factious broils."<sup>12</sup> The tories exploited this suspicion to the utmost. They always maintained that the advocacy of reform was but a pretext to conceal designs for establishing a republican government. This was unfair to Mackenzie. His aim was to overthrow the local oligarchy ; concerning the means he was not so decided. Time and again he appealed to the Colonial Office, and there expected redress. Only when this appeared a futile hope, did he fall back on the other alternative, rebellion. It was in the interests of the family compact, however, to confuse the issues, and to substitute the British connection instead of themselves as the butt of Mackenzie's fulminations. It is interesting to speculate how far the insinuations of disloyalty hurled at the radicals for many years were responsible for bringing about that state of rebellion which ultimately occurred. The chief point to be noticed here is that republicanism and democracy were at cross purposes in Upper Canada. A desire for democratic institutions led the public to support the reformers ; fear of republicanism led the people to neglect them.

Why, it may be asked, did the Canadians possess such illogical distaste for everything which smacked of republicanism ? Chiefly, no doubt, for reasons of sentiment. Many of the settlers had been loyalists in the thirteen colonies, or subjects of the king in the British Isles. Partly also because the colony derived undeniable benefits from the British connection. It was entirely dependent on Great Britain for defence. Though great public works, with the exception of the Rideau canal, were built on the credit of the province, yet the liberal loans contracted in England alone made these works possible. However bitterly Canadians might and did complain of the corn laws, they were by these laws accorded over their great competitor, the United States, a preference which stood them in good stead financially. All the corn laws placed

<sup>12</sup> Coyne, *The Talbot Papers*, p. 120.



colonial corn on a lower schedule of duties than foreign corn.<sup>13</sup> There was often expressed in the Canadas a desire that the corn laws should be still further lowered in their favour, but not that other nations should be admitted to the same privilege.<sup>14</sup> Moreover, the high preferential duties in favour of Canadian timber were retained in England for the benefit of vested interests in the Canadas.<sup>15</sup> In 1830 the Canadians used influence to prevent the concession to the United States of the free navigation of the St. Lawrence river.<sup>16</sup> The restriction of Canada to the British market for manufactured goods did not operate as a hardship, for most articles could be obtained cheaper in England than elsewhere.<sup>17</sup> Tea was admitted free of duty into the United States and was obtainable there cheaper than in Canada, so that the exclusion from Canada of tea from the United States in the interests of the East India Company led to a thriving smuggling trade which aroused considerable complaint.

This, however, was a minor restriction. Canadians grumbled at the restraints of the old colonial system, but they valued its privileges. The infant province could not have stood alone commercially. Had it not existed as an integral part of the British commercial system it would have been compelled to seek incorporation into the American system, an alternative which was not attractive. "Do you consider it to be the prevailing wish of the Upper Canadians to remain connected with this country?" was a question put in England to W. H. Merritt, the founder of the Welland Canal and a man of enlightened views on economic problems. "Yes, there never was a country more happily situated than Upper Canada in her connection with this country. From her soil, climate, and situation she must be wholly agricultural; you receive her produce on more favourable terms than the produce of the Americans; we receive your manufactures on paying a moderate duty of about  $2\frac{1}{2}$  per cent, while Americans are paying

<sup>13</sup> The most important acts were 6 Geo. IV, cap. CLXIV and 9 Geo. IV, cap. CLX.

<sup>14</sup> *Journals*, March 31, 1821, First Report of Select Committee on Internal Resources.

<sup>15</sup> See *Canada and its Provinces*, vol. IV, pp. 568-9.

<sup>16</sup> C.O. 42/391, Colborne to Murray, Jan. 26 and March 23, 1830.

<sup>17</sup> *Canada and its Provinces*, vol. IV, pp. 582-5.

50 to 100 per cent. Consequently we must obtain our supplies at a much cheaper rate. Any person will not only see but feel this advantage, so that by securing our interest you have the best guarantee of our attachment and connection. We are naturally rivals to the Americans, we grow the same articles, seek the same markets and endeavour to draw the produce of each other through our different communications.”<sup>18</sup>

This was in 1828. After 1830, when the United States had agreed to accept Huskisson's measures of 1825 for reciprocal trade,<sup>19</sup> the situation was not so favourable to Canada. She enjoyed fewer privileges as compared with the United States and hence resented the more her restrictions. The result was that by 1835 a committee of the assembly reported that England and the United States had arranged their commercial system in their own interests, in a manner which involved considerable hardship for Canada. High tariffs in the States led to a desire for high tariffs in Canada, and in 1836 and 1837 the assembly registered its complaint against the inability of the province to arrange its own commercial system.<sup>20</sup> This is an interesting forecast of later policy, but before 1837 it was nothing more. Vested interests in Canada were bound up with Great Britain, and such a situation operated strongly against a serious movement for secession from the empire. The real danger on this score was not to come until after the repeal of the corn laws.<sup>21</sup>

There was another reason why Upper Canadian democracy did not incline toward political independence. It rather clung to Great Britain as the only safeguard against two great dangers. The first was economic. Lower Canada, by controlling Upper Canada's outlet to the sea, might hold her up to ransom. The second was racial. The French of Lower Canada were conducting a struggle to get control of the government, and they outnumbered the English of Lower and Upper Canada combined. In sympathy for the French, Mackenzie stood almost alone; the vast mass of Upper Canadians feared possible French domination.

<sup>18</sup> *Report on Civil Government*, 1828, p. 257.

<sup>19</sup> See Dunning, *The British Empire and the United States*, pp. 58-9.

<sup>20</sup> *Journals*, Feb. 16, 1836; *Journals*, 1836-7, append. 7, Report of Committee on Trade and Commerce.

<sup>21</sup> See *Canada and its Provinces*, vol. IV, pp. 564-85; *American Annual Register*, 1826-30.



To sum up,—the desire for political progress, the existence of real defects and anomalies in the administration, the monopoly of power possessed by a relatively small minority, the arrogant assumption of superiority on the part of that minority, and, above all, the strong tendency of provincial society in favour of democracy, rendered inordinately acute by the proximity of the United States, all contributed to win support for the men who styled themselves reformers. On the other hand sentimental, economic and political considerations of a different nature were creating suspicions against the same men. Desire for democracy warred against dislike of republicanism; the political reforms advocated by the radicals were weighed in the scale with the economic progress visible under the tories; the arrogance of the provincial oligarchy tended to be balanced by the increased reasonableness of the Colonial Office; and politics in Upper Canada were thrown into a state of unsettled equilibrium.

Under such circumstances, in a small society, the influence of individuals may easily be decisive. If John Strachan injured the cause of the tories by his militant imperialism, William Lyon Mackenzie lost many supporters by his aggressive radicalism. Moderate men found his leadership distasteful; they were compelled to disavow sympathy with his more extreme pretensions; yet Mackenzie forced himself upon them as their leader. Robert Baldwin and his father did not seek re-election after 1830. *The Patriot*, edited by Thomas Dalton, was as abusive in its opposition to the reformers in 1832 as it had been in their support in 1830. Even Francis Collins in the *Freeman* turned against Mackenzie. The *Kingston Herald*, edited by H. C. Thomson, a member of the assembly, transferred its support to the government about 1832.

Much more important was the political conversion of the *Christian Guardian*<sup>22</sup> and the editor, Egerton Ryerson, the real leader of the Methodists. Though Ryerson mixed religion and radical politics in his paper, he was never a real reformer. He had political interests rather than political principles. So

<sup>22</sup> This paper in 1831 paid 227*l.* 10*s.* postage, whereas its nearest competitor, the *Colonial Advocate*, paid only 56*l.* 12*s.*, and the total postage of all the papers of Upper Canada, excluding the *Guardian*, amounted to less than 200*l.* (*A. & P.*, 1833, XXVI. Returns of gross Postage paid by newspapers of Upper Canada). Postage rates give an approximate estimate of circulation.

long as he was an Episcopal Methodist, and state aid was limited to the Anglicans, the Presbyterians, and the Roman Catholics, he denounced bitterly the contaminating practice and the family compact which applied it. In 1832, when the British Wesleyans were induced to return to Upper Canada, by promise of government aid,<sup>23</sup> Ryerson took alarm and changed his course, steering for union with the Wesleyans. To reach this haven, however, he had to throw overboard his radical principles. Being a politician, he proceeded cautiously, dropping little parcels of his political freight until he was safe in the church union, and was ready to jettison his whole cargo. His first move aroused scepticism. On May 2, 1832, the *Herald* insisted that "the *Guardian's* disavowal of Mackenzie and his vile measures and the assertion that he had never advocated republicanism, like many other newspaper paragraphs, require confirmation." On March 31, 1833, the critical *Herald* could point out nothing more startling than that the *Guardian* contained strictures on one of the reform papers, presumably the *Cobourg Reformer*."<sup>24</sup> Then came the trip to England to negotiate concerning the church union. There Ryerson found a moral reason for deserting his former associates,—a reason fit for the public ear. Though the champion of the reformers, Joseph Hume upheld slavery. Ryerson developed a distrust of the man, and a righteous conviction that he who supported slavery should not be exalted as a hero in Canada.<sup>25</sup>

On his return to Canada, with the union in his pocket, Ryerson astounded all parties by publishing in the *Guardian* of October 30, 1833, his "Impressions of My Late Visit to England." His article contained a description of the leading parties in England, the tories, the whigs and the radicals. Radicalism, he said, was but another word for republicanism, and the notoriously infidel character of the radicals deterred religious people from associating with them. The moderate tory was glorified at the expense of the "crabbed whig" and the "radical levellers."<sup>26</sup>

<sup>23</sup> See above, p. 97.

<sup>24</sup> The author, working in England, regrets that she had no access to files of the *Christian Guardian* itself.

<sup>25</sup> *Story of My Life*, pp. 118; *Celebrated Letter of Joseph Hume*, pp. 12-20.

<sup>26</sup> *Story of My Life*, pp. 122-24.



Thus was the apostasy of Egerton Ryerson announced. "The *Christian Guardian*," so reported *The Advocate*, "under the management of Egerton Ryerson, has gone over to the enemy, press, types and all, and hoisted the colours of a cruel, vindictive tory priesthood."<sup>27</sup> The immediate effect was dissension among the Methodists. "Some of our most respectable Methodists are threatening to leave the Church," a friend wrote to Egerton Ryerson.<sup>28</sup> But Ryerson ultimately triumphed. Amid some opposition, he retained his post as editor of the *Guardian*, and succeeded in carrying in 1834 a series of resolutions abjuring politics in that paper.<sup>29</sup> Ryerson now appeared in his true colours, which were blue, not red. Thenceforth his policy of secularizing the clergy reserves was the only modification of his toryism, and this qualification was half-hearted, because his church was in receipt of state aid.<sup>30</sup>

The significance of this event in the local history of the province can scarcely be overestimated. Mackenzie was driven to greater violence than ever. He published an inflammatory pamphlet entitled *A New Almanac for the Canadian True Blues, with which is incorporated the constitutional reformers' text-book*. The pamphlet was prefaced by a list of threatening quotations such as the following, purporting to be the words of Stanley: "America complained that it was taxed, and oppressively taxed without having a voice in the imposition of the taxes; that it was compelled to obey laws in the framing of which it had no share whatever; that it was in fact so shackled and oppressed that it had no appeal but to force to assert its independence. It did appeal, and justice being on its side, appealed successfully." The *Almanac* proceeded to attack every branch of the government, the militia, the banks, the Canada Company, the Methodist, Presbyterian, and Anglican churches. So general was its assault on all social organizations that it must have been distasteful to everybody with any social pretensions.

More notorious than the *New Almanac* was a letter published by Mackenzie in the *Advocate* of June, 1834. It was a communication from Joseph Hume dated March 29, 1834, which

<sup>27</sup> *Ibid.*, p. 125.

<sup>28</sup> *Ibid.*, pp. 121-9.

<sup>29</sup> *Ibid.*, p. 147.

<sup>30</sup> See above, p. 97, and below, p. 186.

commented with bitter invective on the conduct of Ryerson and on Mackenzie's expulsions. "Your triumphant election on the 16th and ejection from the assembly on the 17th, must hasten that crisis which is fast approaching in the affairs of the Canadas, and which will terminate in independence and freedom from *the Baneful Domination of the Mother Country*<sup>31</sup> and the tyrannical conduct of a small and despicable faction in the colony. . . . Mr. Stanley must be taught that the follies and wickedness of Mr. Pitt's government in the commencement of the Irish revolution cannot be repeated now, either at home or abroad, without results very different from what then took place. The proceedings between 1772 and 1782 in America ought not to be forgotten; and to the honour of the Americans and for the interests of the civilized world, let their conduct and the result be ever in view."<sup>32</sup>

This letter, known as the "baneful domination letter," created a great stir in the province. Only two provincial newspapers dared support the *Advocate*. The Common Council of York, under Mackenzie's influence, defended Hume, but resolutions disavowing all participation in his sentiments were forwarded from the Wesleyan Methodist Conference and from all the districts. Mackenzie, forced to justify himself, denied that the letter implied revolution. "I am sure I have been acting the part of a sincere friend of the empire to which I belong while seeking the independence of Canada from the baneful domination of the Colonial Office. If revolution, violent revolution, is to be avoided, if an honourable and beneficial connection with Great Britain is to be maintained, it must be in the way proposed by Mr. Hume, namely, by conciliating the people and allowing the colonists the management of their internal affairs. Those who hold a different language are manifestly working to drive Canada into the arms of the United States."<sup>33</sup> This defence was certainly adroit. It may have been sincere so far as Mackenzie was concerned, but it was not convincing in the mouth of Joseph Hume before the House of Commons.<sup>34</sup>

The majority of the people of Upper Canada cannot have

<sup>31</sup> The italics are those of the tory publisher.

<sup>32</sup> *The Celebrated Letter of Joseph Hume*, Toronto, 1834.

<sup>33</sup> *Patriot*, June 9, 1834.

<sup>34</sup> Hansard, Third Series, vol. XXV, Aug. 4, 1834.



taken the letter as seriously as did the press. They were accustomed to hear the tories cry "Wolf! Wolf!" and whatever may have been Mackenzie's motives they were ready to judge with lenience a man who had just been expelled from the assembly for the fifth time. The election of 1834 took place while the "baneful domination" letter was still under discussion, and yet a majority of reformers was returned. The new assembly elected Bidwell to the speakership.<sup>35</sup> In reply to insinuations against Mackenzie and Hume in the speech from the throne, it recorded the opinion that in a free country a difference of political outlook should not lead the executive "to impeach the loyalty, integrity and patriotism" of those in opposition.

"We feel," continued the assembly's address, "that we should be wanting in candour were we to withhold from your excellency our firm belief that nothing would serve more effectually to alienate the affections of his majesty's loyal people and render them dissatisfied with the administration, than exciting such feelings; while, on the contrary, should the government be administered agreeably to the interest, meaning and spirit of our glorious constitution, the just wishes and constitutional rights of the people duly respected, the favours and patronage of his majesty indiscriminately bestowed on persons of worth and talent, who enjoy the confidence of the people, without regard to their political opinions, and your executive council filled with moderate, wise and discreet individuals, who are understood to respect and to be influenced by the public voice, we have not the slightest apprehension that the connection between this country and the parent state would long continue to exist and be a blessing naturally advantageous to both."<sup>36</sup>

This reproof, ponderous though it was, gives a clear statement of the attitude of the house to reform and to the British connection.

The session of 1835 ran a similar course to those of previous reform assemblies. Election petitions consumed a large part of the time of the house. On February 16, by a vote of thirty-three to nine, the entries with regard to Mackenzie's

<sup>35</sup> By a majority of 29 to 22.

<sup>36</sup> C.O. 42/425, enclosed in Colborne to Colonial Secretary, Jan. 26, 1835.

expulsions were expunged from the Journals, thus closing an episode of Canadian history as the Wilkes agitation had been closed in England.<sup>37</sup> Bills were passed to sell the clergy reserves, to abolish primogeniture, to amend the charter of King's College, to relieve the Quakers of militia fines, to impose tariff duties on American produce, and on many other subjects, but the most important of these measures were lost in the legislative council. By a vote of twenty-six to fifteen the house adopted an address to the crown complaining that its exertions had been rendered unavailing by the council.<sup>38</sup> The address contained a list of the bills rejected. The council replied at length, vindicating its conduct,<sup>39</sup> and nothing further was achieved. The assembly also passed a vote claiming control of all the revenues of the crown, including the territorial revenue.<sup>40</sup>

The chief work of the session was that of a committee on grievances which Mackenzie early secured.<sup>41</sup> The report of this committee was laid on the table, and two thousand copies were printed, but it was neither read to the house nor adopted. It was, however, a remarkable document which attracted more attention in England than it did in Canada. Because the committee had reported on minor matters before, the great report was known and published as the *Seventh Report on Grievances*. With its numerous appendices and minutes of evidence it formed a volume of about four hundred pages, a sort of grand remonstrance, embodying past and present complaints. The report itself is short and chiefly devoted to a graphic picture of the great extent of the patronage of the crown. The tone is impersonal and the style superior to that usual with Mackenzie. The chief recommendations will receive attention in the following chapter. The mass of evidence which it contains was collected from the Journals, from the Blue Books, and from returns furnished by the governor. Colborne, although qualifying the conclusions of the committee

<sup>37</sup> *Journals*.

<sup>38</sup> The Report is enclosed in C.O. 42/425, Colborne to Hay, April 18, and May 15.

<sup>39</sup> Report of Committee of the Legislative Council on the Address of the Assembly concerning Rejected Bills, 1835.

<sup>40</sup> *Journals*, April 13.

<sup>41</sup> *Journals*, Jan. 23 and April 10; C.O. 42/427, Colborne to Glenelg, Sept. 12.



by explaining the point of view held by the executive on most points, was not able to indicate any serious inaccuracies.<sup>42</sup>

The report indirectly contributed to the resignation of Sir John Colborne. Though it may seem unfortunate that the best of Upper Canadian governors should have been removed on account of an administrative quarrel, a change in the governorship was probably desirable. Colborne had become increasingly conservative and out of sympathy with the policy of the whig ministry in England. He had been in the habit of writing long confidential letters on the state of Upper Canada to the under-secretary, Hay, and as Hay had customarily passed them on to the Secretary of State, Colborne had not considered it necessary to pen elaborate formal despatches. On accession to office Lord Glenelg complained of the irregular and scanty information which he received from Colborne.<sup>43</sup> The Seventh Report, along with exaggerated accounts of the disaffection in Upper Canada, reached England through other than official channels, and the fussy Glenelg was decidedly alarmed. Colborne, a proud man, indignantly replied to Glenelg's remonstrances that nothing of peculiar importance had taken place in the assembly. The Seventh Report he pronounced "a document disgraceful to the persons who received it."<sup>44</sup> Glenelg continued to scold Colborne for his recalcitrance; he also announced that the report on grievances had been entrusted to a committee of the House of Commons and that an answer would be given in January, which should include a remedy for all real grievances.<sup>45</sup> On the same day he informed Colborne that he might expect to be speedily relieved of the administration of Upper Canada.<sup>46</sup> Colborne laid the blame for the quarrel on Stephen<sup>47</sup> and at once resigned, complaining bitterly of the conduct of the Colonial Office.

<sup>42</sup> C.O. 42/427, Colborne to Glenelg, Sept. 22.

<sup>43</sup> C.O. 43/44, Glenelg to Colborne, July 2, 1835.

<sup>44</sup> C.O. 42/427, Colborne to Glenelg, Sept. 16, 1835.

<sup>45</sup> C.O. 43/45, Glenelg to Colborne, Oct. 28.

<sup>46</sup> *Ibid.*

<sup>47</sup> C.O. 42/427, Colborne to Glenelg, Oct. 28. Stanley had been succeeded at the Colonial Office by Spring Rice in August, 1834; Spring Rice by Lord Aberdeen, and Aberdeen by Lord Glenelg in April, 1835, but these gentlemen were all figure-heads. The real head was James Stephen, who had been counsel for the Colonial Department since 1813, assistant under-secretary for the colonies from 1834 until his promotion to under-secretary a year later. Despatches from the colonies were always referred to him, and his comments and drafts were adopted with little alteration in the official

## CHAPTER X

### THE DAWN OF A NEW CONCEPTION

AT this point in the history of Upper Canada, on the eve of the arrival of the governor under whom political affairs were quickly to be brought to a crisis, it is expedient to pause and to take stock, as it were, of the larger aspects of the situation. For twenty years the condition of the colony had been one of political unrest. There had been no concentration of effort on a single issue, and there had been much shallow bickering resulting from personal and racial animosities. The majority of people in any country respond easily to grievances, but they seldom seek to penetrate to the root causes from which those grievances spring. In Upper Canada, however, whether the complaint originated in the land policy, or in the clergy reserves, in the schools, or in the bank monopoly, or in the state of trade, or perhaps in some personal injury, or in jealousy at expulsion from office, everything seemed to lead to one conclusion,—the system of government was wrong. The people tended more and more to range themselves into two hostile bodies, those who approved of the *status quo*, and those who opposed it. Though there was no party organization, there were the essentials of party divisions on conservative and progressive lines. Division of opinion among the people was faithfully reflected in a democratic assembly, yet the government remained undisturbed in the old grooves. The name, “reformer,” as applied to the malcontents of 1830, was not without significance. Grievances are merely remedied, but constitutions are reformed. Throughout the period the

despatches signed by Lord Glenelg. His colleague, Sir Henry Taylor, wrote that he might better have been called the Colonial Department than its counsel (*Autobiography*, vol. I, pp. 136-7); and he was the “Mr. Mother-Country” of Charles Buller’s famous indictment. (*Responsible Government for the Colonies*, 1840.) The rise of Glenelg and Stephen brought about the retirement of Hay, the permanent under-secretary, who was more conservative than his colleagues.



gradual emergence of a party of constitutional reformers from a body of discontented settlers is discernible. Conscious dislike of Mackenzie and his methods of agitation may have alienated such people as Ryerson from the reformers, but at bottom was a deeper issue, the desirability of remodelling the colonial government. Ryerson saw and appreciated grievances, but all his writings gave the impression that he considered the existing constitution the best attainable. Most tories took the same stand.

The defects of the constitution were painfully apparent to that section of the people imbued with democratic ideas. The colony was entangled in a web of officialdom. The reformers could vent their grievances in a popular house, but they could not even pass acts to remedy the most obvious of them. As the colony developed, not only its constitution but the personnel of its executive remained the same. In practice tenure of the great public offices for life was recognized. Through an office across the ocean the ideas of the ruling class of a very different community were communicated to the colony,—such ideas as the necessity for an aristocracy of wealth, intellect and power, and for a state-endowed church. Unless a man of the people supported these ideas and their champions, he had no chance of obtaining any position of greater eminence than that of popular champion in a debating society. Parliament in London depended chiefly on the Colonial Office for the administration of the colonies, the Colonial Office depended on the local governors, and the local governors depended on their executives. In theory the local executives derived their power from and were responsible to the British parliament, but because parliament depended upon them both for information and action, they enjoyed a maximum of power and a minimum of responsibility. The reformers of Upper Canada needed neither Lord Durham nor Charles Buller to point out these defects. Innumerable witnesses have left their testimony to the ill-feeling which the local oligarchy aroused. Intensely personal in its manifestations, the hatred of the family compact was constitutional in its origins. Even Mackenzie, in attacking Sir John Colborne, took pains to explain that it was the system and not the man that was at fault.<sup>1</sup>

<sup>1</sup> C.O. 42/413, Mackenzie to Goderich, Aug. 3, 1832.

In Great Britain, however, this fact was unrecognized. Information concerning the colony came almost entirely from the governor as the mouthpiece of the executive. Unlike other colonies, Upper Canada did not even possess an accredited agent in London.<sup>2</sup> Every address of the assembly reached the Colonial Office ticketed, if he disliked it, with the governor's adverse comments. Emissaries like Randall and Mackenzie, sent at the public expense in times of crisis, were received merely as private individuals. The British parliament and the Colonial Office, with the best intentions, were too far removed from the locality to feel the pressure of grievances as they were felt in Canada. They were ready enough to remedy specific complaints when brought to their attention, but they had no conception of the necessity of considering seriously constitutional reform. Thinking more of the colonies from the point of view of their loyalty than of their progress, they usually attributed suggestions for reform to disaffection. In the colony, however, democracy warred against republicanism, and the reformers were faced with the problem of reforming the constitution without severing the British connection.

How could this be done? Control of the public purse was well recognized as the basis of political power, and reformers in the Canadas were acting wisely in their own interests when they agitated for surrender of the public revenues to the legislature. The struggle was really fought in Lower Canada, but Upper Canada shared the victory,—the surrender of the crown duties in 1831. In 1835 the Colonial Office decided to offer, with certain reservations, the surrender of the casual and territorial revenue.<sup>3</sup> Consequently, on the eve of the arrival of the new governor, Upper Canada was not only paying her own civil service and maintaining her own Church, but was in sight of the attainment of popular control over all her revenues except the post office. This was a substantial advance towards the goal of popular government.

Another important reform advocated is chiefly associated with Lower Canada. No portion of the colonial governments fared so hard at the hands of all parties as did the legislative

<sup>2</sup> Except for a short time after 1816, when a certain Mr. Halton received the appointment by act of provincial legislature. He died in 1821, and no successor was appointed. C.O. 42/357, Gore to Bathurst, April 13.

<sup>3</sup> *A. & P.*, 1837, XXIV. First Report of Commissioners for Lower Canada.



councils. The power of the councils was so great that their importance was enhanced. "The council was the root of all the evils which had taken place in the administration of the province for ten or fifteen years," said Mr. Stanley in 1827.<sup>4</sup> In England it was considered that the councils were not sufficiently independent of the executive to form a second house, and that they had not the social prestige which is a useful asset to an hereditary chamber.<sup>5</sup> In a vain effort to remedy these defects the councils of Upper and Lower Canada were enlarged in 1831-2.<sup>6</sup> It is said that Mackenzie advocated an elective council as early as 1829, but the elective principle did not become a living issue until taken up by the Lower Canadian nationalists about 1832. The proposal was acceptable to all advanced reformers; through Roebuck it became the great panacea offered by the English radicals to improve the condition of the Canadas; Mackenzie became more and more a convert to the idea, and through his influence a demand for the abolition or election of the council was a regular item in the reforms demanded in Upper Canada after 1833.<sup>7</sup> The Seventh Report tended to favour it above any other reform. As elective councils had not been unknown in the thirteen colonies, and as the United States presented a successful example of an elective second chamber, the demand was not without plausibility. That it met with no countenance from the government in England was chiefly because it was advocated most persistently in Lower Canada, where an elective council would have meant French control in both houses, and thus a tyranny of the French over the British minority.<sup>8</sup>

An extension of the elective system was the chief remedial measure suggested by the American system. Most Canadians, however, were prone to consider themselves under a form of the British constitution. Had not their first governor boasted that theirs was the "very image and transcript of the con-

<sup>4</sup> Hansard, *Parliamentary Debates*, New Series, vol. XVIII, p. 337; Seventh Report, p. 95, Stanley to Baldwin, April 24, 1829.

<sup>5</sup> Hansard, vol. XXIV. Debate, May 25, on the Legislative Councils. C.O. 42/427, Colborne to Glenelg, Sept. 16; *Seventh Report*, append. XVII.

<sup>6</sup> C.O. 42/425, Colborne to Aberdeen, May 15; *Report of Commissioners*, 1837, XXIV.

<sup>7</sup> Lindsey, vol. I, p. 163; C.O. 42/415, *Colonial Advocate* enclosed in Colborne to Hay, Dec. 14.

<sup>8</sup> See *Sixth Report of Commissioners for Lower Canada*, pp. 6-8.

situation of Great Britain"<sup>1</sup> Looking back upon the two constitutions from the distance of one hundred years, it seems difficult to understand how their similarity could have been stressed. Even if we overlook the supremacy of the one and the subordination of the other, the difference between them is strikingly obvious. The Upper Canadian government was indirectly the product of the seventeenth century, when the standard type of colonial government had been worked out. The old colonial charters, it is true, were modelled on the government of England—but English government in the seventeenth century was very different from that of the nineteenth century. It had been worked by a king and council practically independent of parliament, and it took the battles of the Civil War and the constitutional struggles of a hundred and ninety years to evolve a satisfactory working association between them. Volumes have been written on the growth of the cabinet from the wider privy council, on the gradual rise of one councillor to the position of prime minister, on the development of the party system, and the subordination of the cabinet to the party holding a majority in the House of Commons. The absence of this practice of "responsible government" in the colonies was the leading feature which differentiated their governments from the government of Great Britain in the nineteenth century. In the colonies the constitutional practice of the seventeenth century had become stereotyped in written charters. The governments of the Canadian provinces, though not established until 1791, conformed to the old type, and resulted in the same friction between executive and legislature which had characterised the British government in the seventeenth century. The remedy, as deduced by a twentieth century mind, seems obvious,—apply to the colonies the developed British principle of responsible government.

But the problem was not so simple as it appears. Is it certain that the modern conception of political responsibility was recognised as the leading feature of the British constitution in the early nineteenth century? It was certainly so understood by Lord Durham in 1839, and he is generally given credit for first suggesting that the practice should be applied

<sup>1</sup> *Journals of Assembly*, Oct. 15, 1792.



to the Canadas. But does Durham really deserve this distinction? Some Canadian historians assume that all Canadian radicals, from the time of Judge Thayer in 1806 onwards, were struggling against British opposition, for responsible government in our modern sense of the term.

So familiar is the system that it requires an effort of imagination to adjust the thought of the twentieth century to the constitutional theory of the early nineteenth century. Before 1832, a cabinet was dismissed because it had incurred the displeasure of the king, not because it failed to secure the support of parliament. In the eighteenth century there were only two instances of a ministry resigning in consequence of defeats in the House of Commons, namely, that of Walpole in 1741 and of Shelburne in 1783.<sup>11</sup> From 1783 to 1832 the tory party maintained its ascendancy in the ministry except for a brief interval in 1806-7, and England was not, therefore, treated to the spectacle of a rotation of parties. As it was relatively easy for a ministry supported by the king to obtain a parliamentary majority in the unreformed Commons, the fact that the ministry was dependent on the Commons for its tenure of office seems to have escaped notice. It was not until the Reform Act of 1832 had made parliament more truly representative of the people that the full implications of the constitutional practice which had evolved in the eighteenth century became apparent.

The theory of the constitution, moreover, lagged far behind the practice. The standard exposition of the British constitution in the early nineteenth century was Blackstone's *Commentaries*, a work of the early years of George III. Blackstone wrote from the legal point of view and ignored the cabinet, party government, and all those aspects of responsibility which had developed in his day. It is well known that the American colonists, in formulating the constitution of the United States, accepted Montesquieu's theory of the separation of powers,—the very antithesis of government responsible to parliament,—as the leading attribute of the British constitution.

Even in the British parliament the true implications of the eighteenth century's constitutional development were very

<sup>11</sup> *Anscombe, Life and Career of the Constitution*, vol. II, p. 122 (London, 1907).

slow in being recognized. In 1806, in both houses of parliament, there took place a memorable debate on the theory of the constitution. Lord Ellenborough, chief-justice of the Common Pleas, had accepted a seat in the cabinet. The tory opposition contended that the position of cabinet minister was incompatible with that of chief justice. They insisted that such a seat would involve the judge in the responsibility of the rest of the cabinet for all political measures, some of which would interfere with his duties as judge. The government maintained, in opposition, that he need not advise the crown on contentious measures. They argued that the term, a responsible cabinet, was meaningless. Each head of a department was responsible for the conduct of the department, and each privy councillor was responsible for the advice which he, personally, gave the king, but the cabinet was merely a convenient arrangement for co-operation and possessed no responsibility. It was, in fact, simply a committee of the privy council who advised the king more frequently than did the ordinary privy councillors.<sup>11</sup>

To a reader imbued with a twentieth-century conception of ministerial responsibility this debate is most confusing, until it is realized that the term "responsibility," as used by both parties, meant *legal* responsibility, not responsibility to the Commons or to the electorate. Legal responsibility implied nothing more than liability to impeachment. In this debate, the only one on the theory of ministerial responsibility before 1832, there is no mention of the relation of ministers to the House of Commons. The Lords without a division, and the Commons by a majority of two hundred and twenty-two to sixty-four, supported the position of the cabinet. Arguing on exactly the same lines, Hallam, in his *History of England*, written in 1827, expressed alarm at what he considered to be the arbitrary nature of the cabinet whose existence made it difficult to assign responsibility to a particular minister, and to enforce his responsibility by impeachment.<sup>12</sup> It would appear, therefore, that the theory of responsible government, as distinct from the practice, had not been worked out or clearly expressed in Great Britain much before the Reform

<sup>11</sup> Cobbett's *Parliamentary Debates*, vol. VI, pp. 253-342.

<sup>12</sup> Hallam, *History of England*, vol. III, pp. 184-9.



Act. Were the colonists more clear-sighted than the mother country ?

The Lower Canadians grasped the importance of impeachment as a means of enforcing the responsibility of individual officials<sup>13</sup> at an early date. They had before them, not only British precedents, but the new provision for impeachment embodied in the constitution of the United States. But they could not develop the theory of responsible government. That is a product of the party system, and depends upon a rotation of parties in power. For Lower Canada the division was one of race rather than of party ; the French were a permanent majority, and power could not shift back and forth between them and the English. In the Maritime Provinces the predominance of conservative loyalists prevented party strife from developing until the decade of the 'thirties. In Upper Canada, however, division was really political, and the two parties were so evenly balanced that now one, now the other, secured a majority at the polls. The people were constantly told that they enjoyed a transcript of the British constitution, but the British constitution would have compelled the choice of a new executive after each election, and would have broken down the authority of the family compact. When did this fact first dawn upon the Canadian radicals ?

Certainly there is no word in the voluminous writings of Robert Gourlay which betrays any insight into the practice of the British parliament. In the state papers previous to 1828, in newspapers and printed works, it is doubtful if any reference to responsible government exists. In 1828 the situation changed. The *Canadian Freeman* of June 19 reported Huskisson as saying in parliament on May 2, that "it ought to be a fundamental law, and the first which ought to prevail in any country,—namely, that those who are connected with the administration of justice and the executive government should be dependent on, and subject to, the revision of the legislative assembly." It is notorious that Collins, the editor of the *Canadian Freeman*, often printed garbled versions of speeches to suit his own ends. The sentence quoted above is not only missing from Huskisson's speech as printed by Hansard, but it is contradicted by other passages in the same

<sup>13</sup> *Canada and its Provinces*, vol. III, pp. 281-2 ; vol. IV, pp. 479-82.

speech. It may fairly be considered as an interpolation expressive of a new idea that was beginning to take shape in Upper Canada.

In July, 1828, a number of prominent Upper Canadians, led by Dr. William Warren Baldwin, drew up a petition to the imperial parliament on the subject of the dismissal of Willis. Among the reforms demanded by the petitioners was the following: "That a legislative act be made in the provincial parliament to facilitate the mode in which the present constitutional responsibility of the advisers of the local government may be carried practically into effect; not only by the removal of these advisers from office, when they lose the confidence of the people, but also by impeachment for the heavier offences chargeable against them."<sup>14</sup>

This petition was forwarded to several members of parliament. Baldwin's enclosing letter to the Duke of Wellington was more explicit than the petition. "I am desired by the committee particularly to invite your grace's thoughts to that principle of the British constitution, in the actual use of which the colonists alone hope for peace, good government and prosperity, the pledge of the highly regarded statute of the thirty-first of his late majesty; the principle alluded to is this, the presence of a provincial ministry (if I may be allowed to use the term) responsible to the provincial parliament, and removable from office by his majesty's representative at his pleasure and especially when they lose the confidence of the people as expressed by the voice of their representatives in the assembly; and that all the acts of the king's representative should have the character of local responsibility by the signature of some member of this ministry. It is obvious that the people would not wish any of the judges to belong to this ministry or council of the governor."

On January 28, 1829, the *Upper Canada Herald* reported a debate in the assembly on January 12. Mackenzie had asked "what was meant by the administration, and whether it was to be understood that there was an administration distinct from the governor, whose acts he had hitherto considered as his own." To which William Warren Baldwin replied that "In this province he believed it was the practice to refer

<sup>14</sup> C.O. 42/390, enclosed in Baldwin to Wellington, Jan. 3, 1829.



matters to the executive council ; that council was within our reach, they were responsible to us, and we might, in his opinion, be their constitutional accusers. As an abstract question this house should be placed on the same footing with the House of Commons in England, otherwise those who sat in it could not properly be called the representatives of the people. The right of impeachment of public officers should belong to it."

In these statements the theory of constitutional responsibility may be seen vaguely emerging from the older theory of legal responsibility. Much more precise was an anonymous article published in the *Upper Canada Herald*, and republished in other Canadian papers in October, 1829.<sup>15</sup> The author states that while rummaging among old papers he had found a small tract, undated and unsigned, which he desired to present by way of review. The pamphlet was entitled *Analysis of the Upper Canadian constitution, or a brief review of the rights of persons in Upper Canada, being an adaptation of the first book of Blackstone's 'Commentaries' to the circumstances of the Upper Canadians. To which is added a proposal for a change in the practical administration of the affairs required by the spirit of the constitution itself and absolutely necessary for the preservation of the British connection.* A suggestive essay on the theory of the constitution of a colony of the British empire is contained in the review of the tract which proceeds thus :

"In this, after pointing out the absurdity of having the provincial ministry sometimes in parliament and sometimes out of it ; of having the duties similar to those performed by a secretary of state in England performed by a private secretary of a lieutenant-governor, utterly unknown to the country and equally ignorant of it, and without one particle of political influence among the people, and demonstrating the necessity of a change, the author proceeds to suggest that the administration of the provincial government, under the vice-gerent or the governor, be divided among seven heads of departments, one of whom to fill the place of provincial premier or head of the provincial administration—and which seven heads of departments should all be executive councillors and, *ex-officio*,

<sup>15</sup> *Upper Canada Herald*, Oct. 14, 1829.

form the cabinet of the governor. He also proposes that they should all be in one house or the other of the provincial parliament as the imperial ministers are in England. . . . Such an arrangement of a provincial administration our author thinks would be highly beneficial to the province, provided the salaries of the several offices were low in proportion to the 'means of the colony' and the 'principle thoroughly established' that 'resignation of office must follow the loss of a parliamentary majority.' "

The article concludes with a quotation from the pamphlet. " At present public offices in Upper Canada are merely sources of patronage ; under such a system as is above proposed those in whom the people placed confidence would be, as they ought to be, at the head of provincial affairs. The interests of the executive and the people would then be the same, and the people, seeing that, when they withheld their support from public men, power fell from their hands, would cease to look upon the executive as an enemy. The administration of government would be vigorous, for whatever were the measures of the administration it would have the support of the people, as no administration whose measures were disapproved could remain a week in office. And then, would Upper Canada have what she can never have in effect without it, 'the British Constitution.' "

No pamphlet corresponding to the description of the reviewer can be traced. The reviewer states that it was found among papers of the period of Judge Thorpe, which would date it before 1810, but it seems highly improbable that so clear a statement, involving a discussion of finance and the Church, as well as the executive, and threatening danger to the British connection, should have come from anyone writing before these questions had yet become acute. Moreover, the wording of certain parts of the review, and all the ideas propounded, conform so nearly to the wording of Baldwin's petition of 1828 that a connection between them is suggested. But whether one accepts the pamphlet reviewed as genuine, or takes it for a fabrication dating from the controversy of 1829, it is clear that, after its publication, reformers of the province had at their disposal as clear a statement of the modern theory of responsible government as that of Lord Durham in 1838. In



the absence of more precise knowledge it is only fair to give due credit to William Warren Baldwin as the earliest pioneer in the inestimably important field of propounding correctly the practice of the British constitution. From the date of his entry into the provincial assembly in 1828, the question of responsible government is thrust to the foreground. His son, Robert Baldwin, well known in Canadian history after 1840 as a liberal prime minister, has been called the "man with one idea," so completely did the theory of responsible government dominate his political life, and Robert Baldwin, in a public document, has recorded that he owed the idea to his father.<sup>16</sup>

After these first expressions of the principle which was to revolutionize the British Empire, the term "responsible government" occurs again and again in the writings of Upper Canadians. Indeed it is rare to find any representation on abuses which does not include a demand for responsible government. In reply to the speech from the throne in 1829 and again in 1830, the assembly expressed its want of confidence in the ministers who surrounded the governor.<sup>17</sup> "They tell us," wrote Mackenzie sarcastically, "we have the British constitution in Canada. It may be true. But where are the men in England who could have continued in office as the advisers of the sovereign when voted utterly unworthy of his confidence in successive sessions and successive years, by votes of the House of Commons, 36 to 6, and 37 to 1?"<sup>18</sup> But Mackenzie tended to favour more and more the American constitution with its elective two houses and president, and his rôle was rather to urge grievances in the existing system than to hold up the beacon-light which was to guide the reformers into the harbour of responsible government.

Meanwhile, amid the wear and tear of political strife, the province was moving slowly towards its goal. Responsible government could be realized only when the people controlled the greater part of their revenues, and every step toward financial autonomy was a step forward. Responsible government meant that the Colonial Office should definitely relegate

<sup>16</sup> *Journals*, append. vol. III, 1836, No. 106, p. 40.

<sup>17</sup> C.O. 42/388, Colborne to Murray, Feb. 13, 1829; C.O. 42/391, Colborne to Murray, Jan. 18, 1830.

<sup>18</sup> C.O. 42/413, Observations on the State of Representation of the People.

to the provincial legislature the internal government of the colony, and it so happened that all parties in the 1830's were advocating less and less detailed control. Mackenzie and the radicals, when they insisted on complete local autonomy, the tories of Upper Canada when they objected to the disallowance of the bank acts and the dismissal of the crown officers, Colborne when he combatted with Glenelg the necessity for a detailed correspondence with the Colonial Office, the English radicals who objected to spending money on the colonies, the British whigs who were moving toward free trade, the Colonial Office itself when it referred to the colonial legislature the question of the clergy reserves and of the university,—all in their different ways were paving the road to responsible government.

The party discord which was itself instrumental in calling forth the theory of responsible government led in turn to party organization which was indispensable to its application. By 1828 a real divergence of principles and ideals made a classification of the assembly into tories and reformers fairly easy. Organization naturally arose first among the reformers. In the various "central committees," "friends of religious liberty," and so on, we may detect its beginnings. In December, 1834, there was formed at Toronto the "Canadian Alliance Society," which rapidly developed branches in the country. In 1837, under the name of the "Constitutional Reform Society," it was still active, W. W. Baldwin being its president.<sup>19</sup> The society issued a prospectus which reads exactly like the platform of a modern party. It included in its programme the attainment of responsible government, separation of church and state, disposal of the clergy reserves, vote by ballot, abolition of primogeniture, amendment of the jury laws and many other democratic tenets.<sup>20</sup> It also undertook to support certain candidates at the polls.

In a more technical field the movement toward responsible government was more confused. Although inclusion of office-holders in the legislature is the only step essential to the attainment of responsible government, in practice it is neither necessary nor advisable that minor officials should engage in

<sup>19</sup> *Journals*, append., 1836-7, Evidence of Baldwin on Duncombe's Petition.

<sup>20</sup> C.O. 42/423, Prospectus enclosed in Colborne to Hay, Dec. 27, 1834.



politics at all. For this reason a differentiation is made between political, and judicial or administrative offices. Certain high offices of state are judged political, and though the holder vacates his seat in parliament on acceptance of office, his appointment is no bar to re-election. On the other hand, judges, priests, and members of the civil service are excluded from parliament. This differentiation was begun in England by the well-known act, 6 Anne, cap. VII, but previous to the Reform Act there were still many minor office-holders in parliament, and the principle was not applied with the stringency which experience and civil service examinations impose on parliament to-day. In Canada we find an increasing insistence on the exclusion of certain men from the assembly. A great principle triumphed when the Colonial Office conceded judicial tenure during good behaviour and the exclusion of the judges from the councils. Constant complaints against the influence of Archdeacon Strachan in the councils led the Colonial Office to invite him to retire, a step which he took with an ill-grace in 1836.<sup>21</sup> The reformers were indefatigable in pointing out that much work remained to be done. Lists were frequently published to prove that most members of the assembly held offices or pensions under the crown which interfered with their political independence.<sup>22</sup>

Instead of suggesting, however, that a differentiation be made among these offices, it was either suggested that all office-holders be excluded from the assembly or that they all be allowed to sit provided that they returned to their constituents for re-election. In Lower Canada bills to the latter effect were passed by the assembly annually from 1825 to 1830.<sup>23</sup> In Upper Canada a precedent occurred in 1829. Robinson, the attorney-general, was appointed chief justice in July, 1829. Should he thereby vacate his seat in the assembly? Provincial law was silent on the subject, and Robinson accordingly accepted the post of registrar of the county of Kent, a position which by provincial statute cost him his seat in the assembly. In the following January he was appointed to the

<sup>21</sup> C.O. 42/429, Head to Glenelg, Feb. 29, 1836.

<sup>22</sup> *Report on the State of the Representation of the People*, append. 83 and 108-9.

<sup>23</sup> C.O. 42/413, Observations on the State of Representation of the People, append. 5.

legislative council. The assembly took up the question, and passed a resolution that British laws governing elections should apply to Canada, in so far as they were compatible with the Constitutional Act. This meant that the act of 6 Anne, cap. VII, compelled any member of the legislature who accepted an office of profit under the crown to seek re-election.<sup>24</sup> Colborne acquiesced in the decision, and in 1837 an effort was made to give legislative effect to it, but the reformers voted in the negative,<sup>25</sup> because such a provision, by implication, would have allowed judges, sheriffs and postmasters, as well as executive councillors, to be elected to the assembly. The people were groping their way toward a practical compromise between total exclusion of all officials from the legislature and their free inclusion.

The feeling toward the new movement in Great Britain has yet to be indicated. Baldwin's petition and letter of 1828 seem to have been the first notice given to British statesmen of the new principle which was finding favour in Canada. The petition was presented to the House of Lords by Goderich, who announced that the petitioners wished to obtain power of impeaching members of the executive. The Duke of Wellington pronounced such a suggestion impracticable in a frontier country. Stanley informed the Commons that Upper Canada "prayed for a local and responsible ministry,—not stating very clearly of what kind ;—but certainly something more efficient than the council ought to be provided them." Lord Aithorp thought that the constitution of the colony should be assimilated to that of Great Britain "by connecting the legislative council with the people of the colony," a phrase which might mean an elective council, but certainly not responsible government. Baldwin's petition was set aside on a technicality.<sup>26</sup>

Stanley was a little more explicit in his private letter to Baldwin.<sup>27</sup> "On the last, and one of the most important topics, namely the appointment of a local ministry subject to removal or impeachment when they lose the confidence of the

<sup>24</sup> *Upper Canada Herald*, Jan. 27, 1830; C.O. 42/413, Observations on the State of Representation of the People, append. 12-15.

<sup>25</sup> *Journals*, 1836-7, append. 23.

<sup>26</sup> Hansard, *Parliamentary Debates*, Third Series, vol. XXI, pp. 1327-32 and p. 1105.

<sup>27</sup> *Seventh Report*, append., p. 97.



people, I conceive there would be great difficulty in arranging such a plan nor are the wishes of the petitioners very clearly expressed, for in point of fact the remedy is not one of enactment but of practice and a constitutional mode is open to the people of addressing for a removal of advisers of the crown and refusing supplies if necessary to enforce their wishes. I do, however, think that something might be done with great advantage, to give a more really responsible character to the executive council which at present is a perfectly anomalous body, hardly recognized by the Constitution, and effective chiefly as a source of patronage." There is no evidence that the real significance of the new principle was grasped by anyone in England before 1836. Roebuck, who was more active than any other British politician in the cause of Canadian reform, bent all his energies to a reform of the legislative councils.<sup>28</sup> When the assembly of 1828-30 was replaced by the conservative assembly of 1830-4 the question made little progress in the colony itself, and it was not until 1835 that responsible government was again discussed in detail. Unfortunately by this time Mackenzie had been driven by the influence of Roebuck and Papineau and by his admiration for the United States, to advocate the American system rather than the British, and the Seventh Report reflected this difference of opinion among the reformers.

The report explained that there were three points of view in the colony. Men like Dr. Strachan believed that things were well enough as they were. A second class desired a new scheme never tried in colonial government, "some heads of departments well paid, to direct the government, to prepare bills and most of the business of the session, and to hold office or lose it according as they may happen to be in a minority or majority in the House of Assembly." The third class were in favour of elective institutions.<sup>29</sup>

The answer of the Colonial Office to the Seventh Report was the appointment of a new governor for Upper Canada with new instructions. His policy will form the subject of the following chapter.

<sup>28</sup> Hansard, *Parliamentary Debates*, vol. XXIX, Third Series, May 16, 1836; Roebuck, *The Canadian Portfolio*.

<sup>29</sup> *Seventh Report*, article, "Responsible Government."

## CHAPTER XI

### THE CRISIS UNDER SIR FRANCIS BOND HEAD

THE prospect of a new governor awakened great expectations in Canada. No one was in a position to discern how little ground the reformers had for hope. The Melbourne ministry had such precarious support in parliament that its policy was necessarily timorous. Lord Glenelg was to prove the most pusillanimous of colonial secretaries. Moreover, he was handicapped by William IV, to whom he was obnoxious, and who insisted upon maintaining his full prerogative in colonial affairs.<sup>1</sup> In the summer of 1835 a new governor and a royal commission had been sent to investigate the affairs of Lower Canada. The instructions to Lord Gosford smacked strongly of the personal influence of the king. Throughout they asserted the royal supremacy and the king's reluctance to allow the constitution of the two councils to come under discussion at all.<sup>2</sup> The one concession made was that the commission might consider the utility of surrendering the casual and territorial revenues, but the surrender was fenced with conditions which rendered it unacceptable to the province.<sup>3</sup>

The attitude of the ministry towards Upper Canada was not more encouraging. Colborne was instructed to call the assembly in January and to prepare it to receive the king's answer to the grievance report. At a time when the attention of all reformers was concentrated on the alteration of the constitution in so far as the two councils were concerned, the assembly was warned not to propose "any measure incompatible with the great fundamental principles of that constitution, under which the province had made such unparalleled

<sup>1</sup> *Melbourne Papers*, p. 349; *Life of Lord John Russell*, vol. I, pp. 249-50; *Greville Memoirs*, vol. III, p. 283; *Times*, July 18, 1835.

<sup>2</sup> *H. of C. Report*, 1836, XXXIX, No. 113.

<sup>3</sup> The offer of surrender was made in Upper Canada on Feb. 13, 1837 (*Journals*.) For its failure see C.O. 42/438, Head to Glenelg, Aug. 22.



advances in general prosperity and social happiness, and to the maintenance of which the king and both houses of the general assembly of the province have given pledges so solemn and deliberate.”<sup>4</sup>

The instructions to the new governor were issued on December 5. They were exceedingly vague. After opening with the announcement that the most important era in the history of the province had arrived, they dealt one by one with the complaints of the grievance report. The governor was to reform all “real grievances” and to treat the assembly with the “most studious attention and courtesy.” No specific concession of any sort was suggested. The people were to remember that “the administration of public affairs in Canada is by no means exempt from the control of a practical responsibility. . . . To his majesty and to the imperial parliament the governor of Upper Canada is at all times most fully responsible for his official acts.” Heads of departments were expected to resign if they saw fit to oppose the governor; minor officials should preserve a strict neutrality. If such an attitude were adopted, responsibility would be established “without the introduction of any new and hazardous schemes.”<sup>5</sup>

Such instructions must have proved a handicap to any governor. They forbade him to take decisive measures in opposition to the radicals, while precluding him from successful co-operation with them. The governor selected was Sir Francis Bond Head. He had served in the Royal Engineers during the Napoleonic wars, and was a major on half-pay in 1836. In 1825 he had gone to South America as manager of the Rio Plata Mining Association. The enterprise failed, but Head gained distinction as the author of *Rough Notes of Journeys on the Pampas and Andes* and *Bubbles from the Brunnens of Nassau*. In 1834 he had been appointed an assistant poor law commissioner in Kent. In November, 1835, he was knighted. His qualifications for the governorship of Canada are not apparent. His life had been far removed from politics, and he himself has recorded that he had never voted in his life.<sup>6</sup> The only connection that he had with the court was

<sup>4</sup> C.O. 42/427, Draft to Colborne, Oct. 28.

<sup>5</sup> C.O. 43/45, Instructions to Head, Dec. 5, 1835.

<sup>6</sup> Head, *A Narrative*, pp. 23 and 33. For biographical details see *D.N.B.*

through his wife's nephew, the Earl of Erroll, the husband of a natural daughter of King William IV.<sup>7</sup> There is a tradition originating with Sir Francis Hincks, that the appointment was a mistake, Edmund Walker Head being the candidate really intended.<sup>8</sup> But the appointment of Sir Francis Head is not really surprising. In the Canadas frequent complaints had been made against the policy of military governors, and Head's position as major of engineers was just such a compromise between civilian and officer as may have appealed to Glenelg. The government had resolved on a substantial reduction of the salary of the post and cannot have expected to attract the highest talent.<sup>9</sup> Upper Canada was considered the least difficult province of the empire to govern, and experience in administration had never been considered a necessary qualification for the office of lieutenant-governor there.

Colborne remained in the province according to his instructions, and convoked the second session of the twelfth parliament on January 15, 1836. Sir Francis Head arrived in Toronto on January 25, and Colborne left the next day. Head published his instructions in full, a course for which he was subsequently censured, as it embarrassed Lord Gosford in Lower Canada.<sup>10</sup> But his defence deserves consideration. He wished the province to know just how far he was free to make concessions. He had been first ordered to give a copy of his instructions, and the word "copy" had only been altered to "substance" in order to give him more latitude of action.<sup>11</sup> Glenelg at first fully approved of the publication.<sup>12</sup>

Head's enthusiastic reception in Upper Canada as a "tried reformer"<sup>13</sup> may be traced to a letter which Joseph Hume sent to Mackenzie. In this letter, Hume summarized the past history of the new governor, stated that his conduct and principles as poor law commissioner had been much approved, that he had been selected as a civilian, and that it was Hume's

<sup>7</sup> Head, *Speeches, Messages and Replies*, Introduction.

<sup>8</sup> Hincks, *Reminiscences of his Public Life*, pp. 14-15.

<sup>9</sup> Head, *A Narrative*, p. 30; C.O. 43/45, Glenelg to Head, March 22, 1836.

<sup>10</sup> *Canada and its Provinces*, vol. III, p. 321.

<sup>11</sup> C.O. 42/429, Head to Glenelg, Feb. 5.

<sup>12</sup> C.O. 43/45, Glenelg to Head, March 22, 1836.

<sup>13</sup> Head, *A Narrative*, p. 33.



personal wish that allowance be made for his instructions, and Head himself treated in the best possible manner.<sup>14</sup>

Sir Francis Head was faced at the outset of his administration with the necessity of adding to the numbers of the executive council which various causes had reduced to three. He decided to make his appointment from the moderates, and having collected lists of names from various people, he discovered that Robert Baldwin was more frequently mentioned than anyone else.<sup>15</sup> He described Baldwin as "highly respected for his moral character, being moderate in his politics and possessing the esteem and confidence of all parties."<sup>16</sup>

Accordingly he offered Baldwin the post of executive councillor. But Baldwin was the chief exponent of the new principle of responsible government, and he at once propounded it to Head as the panacea for all provincial grievances. The governor combatted the proposal as inconsistent with his responsibility to Great Britain. Baldwin replied that in his opinion an executive council composed of a mixture of reformers and tories would not command the confidence of the assembly. Moreover, he himself did not feel in a position to co-operate with the tory members of the council. He therefore declined the appointment. Sir Francis Head then asked Baldwin for the specific terms on which he would consent to enter the council. Baldwin replied that he would require the removal of the three tory councillors and the appointment of his father, John Rolph, John Dunn,<sup>17</sup> and M. S. Bidwell to assist him. However, Head refused to dismiss the tory councillors, and Baldwin again declined the appointment. William Warren Baldwin was consulted and refused on the same grounds as his son. Sir Francis then approached John Rolph, who, in an interview with Bidwell, Dunn and the Baldwins, suggested that, since the governor was new and untried, it was not fair that they should prevent him from co-operating with the reformers by insisting too stringently on the immediate adoption of their principles. He urged his

<sup>14</sup> *Ibid.*, p. 37.

<sup>15</sup> *Ibid.*, p. 53.

<sup>16</sup> C.O. 42/429, Head to Glenelg, Feb. 23, 1836.

<sup>17</sup> Receiver-General and a man who had hitherto abstained from party contentions.

colleagues to accept a compromise in the hope that as executive councillors they could bring Head to their own point of view. Under this pressure Baldwin reluctantly agreed to reopen negotiations. Before taking the oath as councillor, however, he required from the governor a written acknowledgment that he accepted the appointment on unfettered terms and without relinquishing any of his principles. The note was drafted by Baldwin and handed to Sir Francis, who did not return it to him until after Rolph, Dunn, and himself had been admitted to the council on February 20. As finally returned, the wording of the note had been so altered by Head as to render it meaningless. Rolph and Dunn, however, persuaded Baldwin that the governor could not have meant anything disingenuous, and the incident was allowed to pass.<sup>18</sup>

Meantime Sir Francis was forming his political opinions in a decisive manner undreamed of by the reformers. As early as February 5 he wrote to Glenelg that so far as he was able to judge the republican party was implacable, that no concessions would satisfy them, and that their self-interested object was to possess themselves of the government for the sake of lucre and emolument.<sup>19</sup> Bidwell he considered the leader of the republicans. He never altered this first imperfect analysis of conditions in the province, and thus early he formulated his policy of avoiding "the slightest attempt to conciliate any party" and acting "fearlessly, undisguisedly, and straight-forwardly for the interests of the country"; "throwing himself on the good sense and good feeling of the people" and abiding a result which he fully believed would eventually triumph.<sup>20</sup> Subsequent difficulties of the reformers arose from their early delusion that Sir Francis Head bore them the best of good will and was cautious in supporting them only because of a naïve diffidence natural to inexperience. Self confident to the point of intrepidity, Sir Francis was the last man to be troubled by intellectual indecision. Early in his career in Upper Canada he decided that democracy was the foe against which it was his mission to contend. Every con-

<sup>18</sup> C.O. 42/429, Head to Glenelg, Feb. 23, 1836; C.O. 42/435, Rolph to Glenelg, April 27; Append. to *Journals*, 1836, vol. III, No. 106, evidence of Baldwin and Rolph; p. 68, Baldwin to Perry, March 16.

<sup>19</sup> C.O. 42/429, Head to Glenelg, Feb. 5.

<sup>20</sup> *Ibid.*



cession was to be avoided, and the captious assembly passed over in an effort to win the people.<sup>21</sup> From this position he never receded and all his actions were based upon it. In boldness of conception it was a new tory policy which owed its strength to an instinctive comprehension of the psychology of peoples.

Events hurried to a crisis. Rolph and Baldwin soon found themselves in an equivocal position. The governor did not consult them at all on the regular business of state, yet in the eyes of the assembly they were implicated in his policy. They explained their position to Sir Francis, who agreed with them that the sooner the public was informed of the true state of affairs the better.<sup>22</sup> Accordingly, on March 4, all the councillors, including the three tories, presented to Head a long exposition of their conception of the duties of the executive council as established by the Constitutional Act.<sup>23</sup> They argued that the governor was bound to consult his council on every item of public business. Where expressly specified, he was bound to act on its advice ; otherwise, he could reject or ignore it at will, but when its advice was rejected the council could record its dissent if it should so desire. From a neglect to carry out this principle arose the chief ills of the provincial government.

It will be observed that this statement avoided any mention of the fundamental principles of responsible government. It may have been a compromise between the views of the three tories and the three reformers in the council, the reformers considering that they gained by the unanimity of the protest more than they lost by the ambiguity of its wording. But it is more probable that the protest was on the part of the three reformers in the council merely a further pursuance of Rolph's policy of compromise.<sup>24</sup>

Sir Francis Head's reply took everyone by surprise. It was a long, masterful statement of the whole case against responsible government. From the point of view of historical accuracy it cannot be impeached. It pointed out clearly the difference in essence and detail between a colonial government and that

<sup>21</sup> C.O. 42/429, Head to Stephen, March 5 ; Head to Glenelg, April 21.

<sup>22</sup> C.O. 42/435, Rolph to Glenelg, April 27.

<sup>23</sup> *Journals*, March 16.

<sup>24</sup> C.O. 42/435, Rolph to Glenelg, April 27.

of Great Britain, and argued for the personal responsibility of the governor to the British government. The council in the province existed merely for his personal convenience. The governor could never concede any changes in this position, for he had pledged himself "to maintain the happy constitution of this country inviolate, but cautiously, yet effectively, to correct all real grievances."

"The lieutenant-governor," ran the reply, "maintains that the responsibility to the people (who are already represented in the house of assembly), which the council assume, is unconstitutional, and that it is the duty of the council to serve *him*, not *them*; and that if, on so vital a principle, they persist in a contrary opinion, he foresees embarrassments of a most serious nature—for, as power and responsibility must, in common justice, be inseparably connected with each other, it is evident to the lieutenant-governor that if the council were once to be permitted to assume the latter, they would immediately, as their right, demand the former; in which case, if the interests of the people should be neglected, to whom could they appeal for redress? For in the confusion between the governor and an oligarchy, composed of a few dominant families, shielded by secrecy, would not all tangible responsibility have vanished?" The members of his council must either retire from their principles or resign.

The adroitness of Head's tactics is apparent throughout. He proved his position incontrovertibly by precedent; he pointed out the impracticability of the council's demand to be consulted on all occasions; but, above all, he gained the initiative in placing the problem of responsible government before the people. The council had avoided a presentation of responsible government as Baldwin and his friends envisaged it. In their memorial to Head they had carefully evaded any mention of the term. The governor, however, was not the naïve and well-intentioned man of their assumptions. He had shrewdly scented in the idea of responsible government a great potential danger to his prerogatives, and he now sought to present the plan to the people in a manner which should kill it forever. He took advantage of popular ignorance on this delicate question of constitutional theory to distort the whole idea. By ignoring the principle of dependence on the assembly,



he was able to argue that the council was seeking power for personal motives, and that, if it were conceded, all responsibility would be at an end. He thus appealed to the people against the interested designs of his councillors.<sup>25</sup> Moreover, by his implication that the council's paper had embodied the presentation of the principles of responsible government, he succeeded in making the reformers appear stupid as well as intriguing and self-interested.

All the councillors except Baldwin and Rolph at once made their submission, but Sir Francis Head insisted that the councillors must act as a body in withdrawing their representations, and on their inability to do so they all resigned. Head justified this procedure on the ground that a dismissal of Rolph and Baldwin alone would have incurred for him great unpopularity in the country.<sup>26</sup> By dismissing tories as well as reformers he was able to confuse the popular mind and to play up to the rôle of treating all parties impartially. On March 14 he refilled the council by the appointment of four respectable men, who, however, had never participated actively in politics.<sup>27</sup>

On the same day the quarrel was transferred to the assembly. The house passed a series of resolutions beginning with the statement "that this house considers the appointment of a responsible executive council to advise the lieutenant-governor or person administering the government on the affairs of the province, to be one of the most happy and wise features in our constitution and essential to our form of government, and as being one of the strongest securities for a just and equitable administration of the government, and full enjoyment of our civil and religious rights and privileges."<sup>28</sup> By a vote of 42 to 7 the assembly addressed the governor for full information concerning the resignation.

The governor's answer came promptly. If the councillors had merely maintained that "the responsibility and consequently the power and patronage of the lieutenant-governor ought hereafter to be transferred to them," he should have

<sup>25</sup> *Journals*, March 16.

<sup>26</sup> C.O. 42/429, Head to Glenelg, March 21.

<sup>27</sup> *Ibid.* The new councillors appointed were R. B. Sullivan, John Elmsley, Augustus Baldwin, and William Allen.

<sup>28</sup> *Journals*, March 14.

raised no objection to their conduct, however much he disagreed with their theory, but when they maintained that such a theory was already part of the law of the land, their resignation was essential. He could never consent to divest himself of his responsibility.<sup>29</sup> He submitted all the papers of the case to the house, who referred them to a select committee of reformers. While awaiting the report of the committee the assembly, by a majority of thirty-two to eighteen, passed a vote of want of confidence in the new executive.<sup>30</sup> Head replied with a second clear statement of his position.<sup>31</sup>

The committee reported on April 15. The report threw further light on the cleverness of the tactics of the governor. The new conception of responsible government was not understood in its full implications by the ordinary reformers in the assembly, much less by the people at large. Men like Baldwin and Rolph should have been the expositors of their own theory. As a result of Head's manœuvres, they not only lost their best opportunity of defending the cause of responsible government, but they actually confused their partisans in the assembly by the only statement which they had been able to make as executive councillors. Neither Baldwin nor Rolph had seats in the assembly. The report of the committee indicated this difficulty clearly. Its authors were apparently confused in an effort to reconcile the council's paper of March 4 with Baldwin's well-known views on responsible government. They were driven to the argument that responsible government was a part of the existing constitution, a difficult position to prove and at variance with the stand taken by the Seventh Report. The only argument which they could adduce was Simcoe's time-worn statement that Canada possessed "the very image and transcript" of the British constitution. The indignation of the committee against Sir Francis Head for denying that the province possessed the British constitution not only in practice but in theory reminds one of the indignation of the Commons against the Stuart kings for defending in theory what their predecessors had practised with impunity. The report as a whole was an exceedingly verbose and rather

<sup>29</sup> *Ibid.*, March 16.

<sup>30</sup> *Ibid.*, March 24.

<sup>31</sup> *Ibid.*, March 26.



confused re-statement of grievances and of the arguments for responsible government.<sup>32</sup> It ended by a recommendation to the house to withhold supplies as a means of enforcing its wishes.<sup>33</sup>

A great debate on the subject took place on April 18.<sup>34</sup> The reports of the debate indicate that the reformers were united in their desire for an executive council dependent on a majority of the assembly for its tenure of office, whereas their opponents were convinced that such a system of government would mean separation from Great Britain. The address withholding supplies and a memorial to the House of Commons were passed by a majority of thirty-one to twenty. It was the first time that supplies had been withheld in Upper Canada.<sup>35</sup> The assembly was prorogued on April 20. Its dissolution was expected immediately, but was delayed until May 28.<sup>36</sup>

At the prorogation Sir Francis Head resorted to the boldest measure of his bold administration by refusing to grant contingencies and by reserving all the money-bills which had been passed during the session. It was an unprecedented retaliatory measure.<sup>37</sup> The supplies withheld by the assembly amounted to less than 7000*l.* Those withheld by Sir Francis amounted to 162,000*l.*, including all money for schools, roads and bridges, and all public improvements.<sup>38</sup> The refusal of supplies would have affected only the members of the government offices; Sir Francis Head's action affected the whole community. And he took pains to cast the blame for the dislocation of business entirely upon the assembly. In his speech at the prorogation he warned the house that the effect of its deliberate decision would be severely felt by all the people in the public offices, by the cessation of improvement in roads, by the withdrawal of compensation to the sufferers in the late war, and by the check to immigration.<sup>39</sup> Turning his

<sup>32</sup> It fills 36 pages of the *Journals*.

<sup>33</sup> *Journals*, April 15.

<sup>34</sup> Lennox and Addington Historical Society, 1916, *Debates in the Assembly on Responsible Government*.

<sup>35</sup> Except for the deadlock of 1818, when the assembly voted them by address. See above, p. 41.

<sup>36</sup> C.O. 42/429, Head to Glenelg, May 28.

<sup>37</sup> C.O. 42/429, Head to Glenelg, April 21.

<sup>38</sup> C.O. 42/434, Duncombe to Glenelg, Sept. 20; C.O. 42/430, Head to Glenelg, July 27. For list of bills reserved see *Journals*, April 20.

<sup>39</sup> C.O. 42/429, Head to Glenelg, April 20.

opponents' arguments upon themselves he continued :

" I have made up my mind to stand against the enemies of reform, but I have been unexpectedly disconcerted by its professed friends. No liberal mind can deny that I have been unnecessarily embarrassed,—no one can deny that I have been unjustly accused,—no one can deny that I have evinced an anxiety to remedy all real grievances—that I have protected the constitution of the province—and that, by refusing to surrender at discretion the patronage of the crown to irresponsible individuals I have conferred a service on the backwoodsman and on every noble-minded Englishman, Irishman, Scotchman and United Empire Loyalist, who, I know, prefer British freedom and the British sovereign to the family domination of an irresponsible cabinet."<sup>40</sup>

The address ended with an appeal to the people to turn away from agitators and seek their real prosperity in supporting their governor, their constitution and the British connection. It was an avowed appeal to the electorate.

No policy could have succeeded better with an ill-educated people. In vain did the reformers protest that Sir Francis and not the assembly was dislocating business. In vain did they remind their friends that Sir Francis had shown not the slightest inclination to advance any reform.<sup>41</sup> Upper Canada, for the first time, had a governor who appealed to the people, who announced himself their champion. The people believed implicitly the charge of shallow hypocrisy made against their leaders. Sir Francis Head became for the moment a popular hero. " The game is now won if supported at home," Head wrote at once to Glenelg.<sup>42</sup> " Do you happen to know why a little weasel always kills a rat ? " he wrote to a friend on April 27. " I don't think you do, and therefore I will explain it. The rat is the stronger animal of the two, and his teeth are the longest ; but he bites his enemy anywhere, whereas the weasel always waits for an opportunity to fix his teeth in the rat's jugular vein and when he has done so he never changes his plan or lets go till the rat is dead."<sup>43</sup>

<sup>40</sup> *Ibid.*

<sup>41</sup> C.O. 42/430, enclosures in Head to Glenelg, June 22 ; C.O. 42/434, Duncombe to Glenelg, Sept. 20.

<sup>42</sup> C.O. 42/429, Head to Glenelg, April 27.

<sup>43</sup> *Ibid.*, Head to ? April 27.



The remark is typical of Sir Francis Head's method of warring against democracy.

Dozens of loyal addresses poured in upon him from every district in the province.<sup>44</sup> Sir Francis replied courteously to them all, enforcing the idea of his address at the prorogation. Of the stoppage of supplies he made a trump card. It would cause a general stagnation of business; it would ruin the country.<sup>45</sup> "It is my opinion that if you choose to dispute with me, and live on bad terms with the mother country, you will, to use a homely phrase, only quarrel with your own 'bread and butter.'" <sup>46</sup> In this way he appealed to the pockets of the electorate. Its loyalty he took for granted. His was not an appeal for monarchical against republican institutions. The reformers had no principles in his eyes. They were merely scheming demagogues who had hitherto deceived the people. "In each province of the Canadas there exist a few dark, designing men, who, with professions of loyalty and deep attachment to the mother country on their lips, hate in their hearts the British government, because they interestedly desire to reign in its stead."<sup>47</sup> A note of hysteria ran through all his writings at this time. It was exemplified by the scare which he promulgated that an enemy was marching upon the country. "In the name of every regiment of militia in Upper Canada, I publicly promulgate—Let them come if they dare!" <sup>48</sup> Any historian knows how commonly such scares gain credence in moments of popular tension.

Under such circumstances the results of the election in June were not at all surprising. Bidwell and Perry, for twelve years the representatives of Lennox and Addington, found themselves at the foot of the poll. Toronto rejected Mackenzie. To the new assembly was returned but a rump of the reform party.<sup>49</sup>

The reformers were overwhelmed by a deep sense of personal injury. They realized too late that they had been betrayed by the governor. The magic which had alienated public

<sup>44</sup> C.O. 42/430, Head said that there were 26,703 signatures. Head to Glenelg, June 15.

<sup>45</sup> *Speeches, Messages and Replies*. Reply to Electors of Toronto.

<sup>46</sup> *Ibid.* Reply to the Address of the Inhabitants of Newcastle.

<sup>47</sup> *Ibid.* Reply to Address of the Electors of London District.

<sup>48</sup> *Ibid.* Reply to the Address of the Electors of the Home District.

<sup>49</sup> C.O. 42/430, Head to Glenelg, June 8.

opinion from their cause was to them incomprehensible. Mackenzie and Duncombe were convinced that there had been foul play and sent representations to England to prove corrupt practices against Head in the elections.<sup>50</sup> They utterly failed to substantiate their charges. Baldwin and Bidwell retired from politics in despair.<sup>51</sup> Rasher spirits reacted to the hysteria which had turned events against them, and began to plot a rebellion.<sup>52</sup>

From the distance of nearly a century it is easy to account for the first reverse met by the cause of responsible government for the colonies. There is evidence to prove that discord was in the ranks of the reformers in the assembly of 1836. Early in the session an unseemly altercation had taken place over the Seventh Report in which Perry attacked Mackenzie and the allegations of the report.<sup>53</sup> It was only with difficulty that the two radicals patched up their quarrel in the interests of reform,<sup>54</sup> and throughout the session a lack of cordial co-operation between them was manifested in the *Journals* and was sufficient to attract attention in the country.<sup>55</sup>

At a later date Sir Francis Hincks attributed the defeat of the reformers to the defection of Ryerson in 1833.<sup>56</sup> From England in 1836 Ryerson sent back letters and articles to the *Guardian* attacking the Grievance Report. In *The Times* he published six letters against Hume and Roebuck, some of which appeared before the election. His pamphlet, *Peter Perry Picked to Pieces*, probably had its full weight with the large Methodist population of Lennox and Addington.<sup>57</sup> Ryerson himself was convinced that responsible government could only mean a severance of the imperial connection, and this view he shared with a large number of thoughtful men both in Canada and England. A careful statement of the argument which hinges on the anomalous position of the governor under responsible government was made in May,

<sup>50</sup> *Journals*, Nov. 15, 1836; *Journals*, 1836-7, append. 5.

<sup>51</sup> C.O. 42/430, Head to Glenelg, May 5; C.O. 42/454, Hincks to Glenelg, Jan. 31.

<sup>52</sup> On July 4, Mackenzie began the publication of his new revolutionary paper, the *Constitution*; Lindsey, vol. I, p. 391.

<sup>53</sup> C.O. 42/429, Colborne to Glenelg, Feb. 9.

<sup>54</sup> *Upper Canada Herald*, March 1, 1836.

<sup>55</sup> Ryerson, *Story of My Life*, p. 156.

<sup>56</sup> *Reminiscences*, pp. 18-19.

<sup>57</sup> *Story of My Life*, pp. 156-60.



1836, by the commissioners who were investigating the affairs of Lower Canada. It was the old contention that a man cannot serve two masters, and responsible government would mean that the colonial governor would serve the people of the colony, not those of Great Britain.<sup>58</sup> This was a logical position which was difficult to controvert. The only logical, alternative argument had not yet been advanced in 1836, and the whole history of the nineteenth century was to demonstrate the practical difficulty of Durham's proposition that Great Britain should surrender control of internal affairs of the colonies and retain matters of imperial concern. It is only fair to the Tories of 1836 to credit them with an appreciation of the depth of the issues which responsible government involved.<sup>59</sup> When sounder minds were divided over imperial relations, it is not surprising that Head's sensational jingoism won the support of unthinking pioneers.

In spite of the influence of such facts as these, and in spite of the contagion of Sir Francis Head's political methods, the governor had no ground for premature exultation. At the Colonial Office Lord Glenelg watched his protégé with amazement and consternation, mitigated only by his success. The truth is that Sir Francis Head carried out a policy entirely independent of the Colonial Office and in opposition to his instructions, which strongly enforced the necessity of conciliating the reformers. Discord was manifested from the outset, and it was only by bullying Lord Glenelg with threats of resignation that the governor maintained his position. Lack of courage and insight in the Colonial Office prevented the breach from occurring over the great issue of the executive council, and Lord Glenelg incurred the responsibility of raising Sir Francis to a baronetcy for his conduct on the great issue of his administration only to dismiss him later from his post on account of trivialities.<sup>60</sup>

The governor himself was acutely aware of this weakness in his position, but with all his cleverness in sensing the

<sup>58</sup> *H. of C. Report*, XXIV, 1837; Hansard, Third Series, vol. 36, Debate in Commons, March 6, 1837, especially the speech of Lord John Russell.

<sup>59</sup> See *Upper Canada Herald*, April 5 and 19.

<sup>60</sup> C.O. 42/431, Head to Glenelg, Dec. 30 and Nov. 7; C.O. 43/46, Glenelg to Head, Sept. 8; C.O. 43/45, Glenelg to Head, July 25; C.O. 43/46, Glenelg to Head, April 17, 1837.

vulnerable points of the reformers, Sir Francis Head was incapable of gauging their real strength. Well might the *Annual Register* record that the history of his administration was enveloped in mystery, as the effect seemed absolutely disproportionate to the alleged causes. "Something more than therein is apparent would seem required to convert a disaffected into an enthusiastically loyal people."<sup>61</sup> The fact is that Sir Francis Head was the dupe of his own propaganda. "Nothing," he wrote in July, 1836, "can be brighter than the moral and political state of the Canadas. All is sunshine here, and *couleur de rose*. I have no difficulties that are not surmounted, no sickness that is not cured—no sorrow that is not removed, but over Downing Street, and the Commissioners' Place at Montreal I see two black clouds from which I expect both thunder and lightning."<sup>62</sup> Even a rebellion was to fail to disabuse him of the idea that "the people of Canada detest democracy and upon their loyalty his majesty may depend as upon a rock."<sup>63</sup>

The march of change and the strength of great ideas, however, can be only temporarily impeded by the enthusiasm of a political evangelist. The method of Sir Francis Head, that of appealing to the people, was itself a great tribute to the power of democracy and a presage of its victory. While Sir Francis was rejoicing in the triumph of the tories, the soundest statesman in Upper Canada was re-stating his case before the Colonial Office. "I sincerely believe," wrote Robert Baldwin to Glenelg on July 11, "the crisis to have arrived which is to decide the ultimate destiny of Upper Canada as a dependency of the British Crown."<sup>64</sup>

<sup>61</sup> *Annual Register*, 1838, chap. XIII.

<sup>62</sup> C.O. 42/430, Head to Glenelg, July 30, 1836.

<sup>63</sup> *A Narrative*, chap. VII; C.O. 42/431, Head to Glenelg, Oct. 28.

<sup>64</sup> C.O. 42/431, Baldwin to Glenelg, July 13.



## CONCLUSION

AN attempt has been made to present an account of the march of events in Upper Canada during the twenty years which preceded the rebellion of 1837. It was a period essentially transitional. From one point of view the history of Upper Canada at this time looks backward, presenting numerous analogies to the history of the thirteen colonies under the old empire. The form of government was the old form ; the struggles between governor and assembly were the old struggles ; the commercial system, with its peculiar weaknesses and its elements of strength, was the ancient system, just beginning to crumble. The ideas of the privileges and duties belonging to a dominant class of society which were held by the officials of Upper Canada, were the old ideas of the eighteenth century. The whigs had formed such a class in England ; the tories formed it in Canada, but the difference was only in name. In opposition to the new theory of the complete subordination of the colonies to the imperial parliament, which dominated political thought in England after the American Revolution, the political theory which inspired the people of Upper Canada was the old theory which the loyalists had inherited from the thirteen colonies,—the theory that in so far as the internal affairs of the colonies were concerned, the imperial parliament had no right to intervene.

There is, however, quite a different point of view from which to regard the political history of the various provinces of British North America, and especially of the loyalist colonies of Upper Canada and the Maritime Provinces. From the standpoint of British colonial history the early nineteenth century must be recognized as a period of beginnings. An old empire had been overwhelmed by a political and economic volcano, and before the ashes had cooled, a new empire was founded beyond the borders of the old. Naturally the questions which chiefly interested the Colonial Office at the time were the migration of peoples from England across the seas, the

care of convicts abroad, the activities of traders in the Pacific Isles, the difficulties arising from the white man's relations with men of other races and other types of civilization. Such problems were only incidentally constitutional. Problems of colonial government carried with them a nauseous suggestion of volcanic flames, and were distasteful to a government absorbed in pastures new and green. From one point of view Upper Canada was undoubtedly such a pasture, and nothing could be more praiseworthy than the diligence with which the Colonial Office supervised her development. The allotment of lands, the material welfare of the pioneer, the state of trade, the clearing of the land, the building of canals, these were all questions of absorbing interest to Great Britain, and from this point of view Upper Canada took its natural place as one of the young colonies of a new empire.

We have, therefore, a peculiar situation in Canada. There the old empire was fused with the new. It was inevitable that imperial eyes should see in Upper Canada virgin soil for the pioneer, whereas the pioneers themselves, still warm from the struggle against the volcanic elements of the old empire, detected in the new community the same combustible materials which had existed in the old. Consequently, while the Colonial Office grappled with its new interests and responsibilities, these men of the old empire worried over their old difficulties, practically alone. The result of their efforts was the discovery of a new political device, which had lain undiscovered in the British constitution, and which they were to have the honour of presenting to the new empire. For this reason, the political history of Upper Canada, peculiarly local though it proved itself, plays an indispensable part in the empire's story.

In so far as the Colonial Office possessed a policy towards colonial politics, that policy was an outcome of the American and French Revolutions. The student of the period is impressed with the dominance of an unusual spirit of conservatism, which amounted to a morbid fever of innovation in the government of the colonies. The constant reiterations of prophecies that the remaining colonies would follow in the footsteps of the old empire were not the results of a desire to part with the colonies, but rather of a dismal fatalism which affected even the most optimistic. Though not tyrannical, nor careless, nor



indifferent to the welfare of the colonies, the colonial policy of the period was timid, pessimistic and unenterprising. Especially in the colonies which lay adjacent to the United States, one traces, throughout, the troublesome ghost of the American Revolution, revived after 1815 through the dismal fog of the anti-democratic reaction after the French Revolution.

The efforts to obtain responsible government in this early period were necessarily doomed to failure. Lower Canada, lying side by side with Upper Canada, demanded the same concessions as her neighbour, but her people were untutored in politics, and Great Britain was naturally reluctant to grant to Upper Canada powers of self-government for which the French Canadians were not yet trained. The party divisions inherited from the American Revolution and the War of 1812 were still poignant and bitter in the hearts of Canadians ; the commercial system of Great Britain retained its old restrictions ; Great Britain still recoiled from democratic tendencies as essentially anarchistic ; and so long as these disturbing factors were at work, conditions were not favourable to new experiments in the laboratory of imperial government.

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Vol. XVI. "A Chapter of Canadian Economic History," 1791-1839, by J. Mavor.

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The Constitutional Debates in the Legislative Assembly of 1836. This is a reprint of a rare pamphlet containing the debates on responsible government. It is edited by W. R. Riddell.

#### IV. MAPS

There are numerous maps for Upper Canada and several must be consulted to trace the rapid development of the country. A few only are mentioned :

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Smyth, D. W., Map of Upper Canada describing all the new settlements. New York, 1813.

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